

# Confidential Offering Memorandum

October 2022

## **K&R SA, SICAV-FIAR**

*société d'investissement à capital variable – fonds d'investissement alternatif réservé*

*sous forme de société anonyme*

**THE COMPANY IS NOT SUBJECT TO THE SUPERVISION OF THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER.**

**APPLICATIONS FOR SUBSCRIPTION WILL BE RESERVED TO WELL-INFORMED INVESTORS WHO/WHICH ARE NOT RESTRICTED PERSONS. MARKETING OF SHARES IN THE EU UNDER THE PASSPORT IN ACCORDANCE WITH ARTICLE 30 OF THE 2013 ACT IS LIMITED TO PROFESSIONAL INVESTORS. EACH INVESTOR WILL HAVE TO MAKE HIS/HER OWN ASSESSMENT OF THE CONDITIONS OF HIS/HER PARTICIPATION IN THE COMPANY. IT IS THE RESPONSIBILITY OF THE INVESTORS TO DETERMINE WHETHER A PARTICIPATION IN THE COMPANY IS SUITABLE FOR THEM OR NOT.**

By accepting this confidential offering memorandum (the **Memorandum**) the recipient agrees to be bound by the following:

### **Memorandum – Articles – Subscription Agreement**

This Memorandum is submitted on a confidential private placement basis to a number of Investors who/which have expressed an interest in subscribing for Shares in K&R SA, SICAV-FIAR, a Luxembourg *société d'investissement en capital variable – fonds d'investissement alternative réservé* (investment company with variable capital – reserved alternative investment fund) established in the form of a *société anonyme* (public limited liability company) under the 2016 Act (the **Company**). Unless otherwise defined, capitalised terms used throughout this Memorandum shall have the meanings ascribed to such terms in the Section “Definitions” of the General Section.

This Memorandum supersedes and replaces any other information provided by the Company, its initiators, representatives or agents in respect of the Company. The Memorandum is provided for information only and is not intended to be taken as the basis for any investment decision. By accepting this Memorandum and any other information supplied to Investors by the Company or its initiators the recipient agrees that such information is confidential. The information contained in the Memorandum and any other documents relating to the Company may not be provided to persons (other than professional advisers or service providers) who are not directly concerned with any decision on the investment offered hereby. Neither the recipient nor any of its directors, employees or agents will use the information for any purpose other than for evaluating the possibility of an investment in the Company or divulge such information to any other party. The recipient and any of its directors, employees or agents acknowledge that this Memorandum may not be photocopied, reproduced or distributed to others without the prior written consent of the Company or its initiators.

The text of the Articles is integral to the understanding of this Memorandum. Investors should review the Articles carefully. In the event of any inconsistency between this Memorandum and the Articles, the Articles shall prevail.

Prior to subscribing for Shares, Investors should obtain a copy of the Subscription Agreement which contains inter alia representations on which the Company may accept an Investor’s subscription. The Articles, the Service Agreements, the Subscription Agreement and related documentation are described in summary form herein; these descriptions do not purport to be complete and each such summary description is subject to, and qualified in its entirety by reference to, the actual text of the Articles, the Service Agreements, the Subscription Agreement and related documentation, including any amendment thereto.

Prior to investing in the Company, Investors should conduct their own investigation and analysis of an investment in the Company and consult with their legal advisers and their investment, accounting, regulatory and tax advisers to determine the consequences of an investment in the Company and arrive at an independent evaluation of such investment, including the applicability of any legal sales or investment restrictions without reliance on the Company, the Service Providers, the initiators or any of their respective officers, members, employees, representatives or agents. Neither the Company, the Service Providers, the initiators nor any of their respective officers, members, employees, representatives or agents accepts any responsibility or liability whatsoever for the appropriateness of any Investors investing in the Company. Investors are urged to request any additional information they may consider necessary or desirable in making an informed investment decision. Each Investor is encouraged, prior to the consummation of their investment, to ask questions of, and receive answers from, the initiators concerning the Company and this offering and to request any additional information in order to verify the accuracy of the information contained in this Memorandum or otherwise.

Certain statements contained in this Memorandum are forward-looking statements. These forward-looking statements are based on current expectations, estimates and projections about markets, in which the Company will operate, and the beliefs and assumptions of the Company. Words such as “expects”,

“anticipates”, “should”, “intends”, “plans”, “believes”, “seeks”, “estimates”, “forecasts”, “projects”, variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions which are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. Among the factors that could cause actual results to differ materially are the general economic climate, inflationary trends, interest rate levels, the availability of financing, changes in tax and corporate regulations and other risks associated with the ownership and acquisition of Investments and changes in the legal or regulatory environment or that operation costs may be greater than anticipated.

The Board has taken all reasonable care to ensure that the information contained in this Memorandum is accurate as of the date of this Memorandum (or such other date as stated herein). Other than as required under the 2016 Act or in this Memorandum, the Board has no specific obligation to update this Memorandum.

Any translation of this Memorandum or of any other transaction document into any other language will only be for convenience of the relevant Investors having requested such translation. In the case of any discrepancy due to translation, the English version of the Memorandum and of any other transaction document will prevail.

### **Marketing in the EU**

Shares can be marketed to Professional Investors in the EU in accordance with article 30 of the 2013 Act.

Marketing of Shares outside the EU or in the EU to Investors other than Professional Investors must comply with applicable national private placement regimes. Those Investors are required to inform themselves on the conditions imposed by their local requirements before investing in the Company and to assess the impact and the risks they may be exposed to when investing into the Company. This Offering Document has been provided to those Investors upon their own request and the Company declines any liability for damages caused by any restriction imposed to such Investors.

### **Restrictions for US Investors**

Shares have not been registered under the US Securities Act of 1933, as amended (the **US Securities Act**) or the securities laws of any state or political subdivision of the United States, and may not be offered, sold, transferred 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 securities laws. The Company is not registered nor does it intend to register (i) under the US Investment Company Act of 1940, as amended (the **US Investment Company Act**) as an investment company in reliance on the exemption from such registration pursuant to Section 3(c)(7) thereunder. Accordingly, the Shares are being offered and sold only (i) outside the United States to persons that are (a) other than US persons as defined in Regulation S under the US Securities Act and (b) not US residents (within the meaning of the Investment Company Act) in offshore transactions that meet the requirements of Regulation S under the US Securities Act or (ii) to US persons who are (a) “accredited investors” (as defined in Rule 501 of Regulation D promulgated under the Securities Act) and (b) either (I) “qualified purchasers” (within the meaning of Section 2(a)(51) of the Investment Company Act) or (II) “knowledgeable employees” as such term is defined in Rule 3c-5 of the Investment Company Act.

### **Risks when investing into the Company**

Investors should be aware that they bear the financial risk of their investment for a significant period of time as Investors may not request redemption of their Shares at any time or within the period of time suitable for them. Additionally, there will be no public market for the Shares. Accordingly, Investors

should have the financial ability and willingness to accept the risks of investing in the Company (including, without limitation, the risk of loss of their entire investment) and accept that they will have recourse only to the assets of the Compartment in which they invest as these will exist at any time.

An investment in the Shares involves significant risks and there can be no assurance or guarantee as to positive return on any of the Company's Investments or that there will be any return on invested capital. Investors should in particular refer in this Memorandum to Section 24 of the General Section. The investment objectives are based on a number of assumptions which the Company believes reasonable, but there is no assurance that the investment objectives will be realised.

Under no circumstances should the delivery of this Memorandum, irrespective of when it is made, create an implication that there has been no change in the affairs of the Company since such date. The Board reserves the right to modify any of the terms of the offering and the Shares described herein. This Memorandum may be updated and amended by a supplement and where such supplement is prepared this Memorandum will be read and construed with such supplement.

No person has been authorised to give any information or to make any representation concerning the Company or the offer of the Shares other than the information contained in this Memorandum and any other documents relating to the Company, and, if given or made, such information or representation must not be relied upon as having been authorised by the Company, any Service Provider or the initiators.

### **Data protection**

Certain personal data of Investors (including, but not limited to, the name, address and invested amount of each Investor) may be collected, recorded, stored, adapted, transferred or otherwise processed and used by the Company, the Services Providers and the financial intermediaries of such Investors. In particular, such data may be processed for the purposes of account and distribution fee administration, anti-money laundering and terrorism financing identification, maintaining the register of Investors, processing subscription, redemption and conversion orders (if any) and payments of dividends to Investors and to provide client-related services. Such information shall not be passed on to any unauthorised third persons.

The Company may sub-contract to a Processor (e.g., the Alternative Investment Fund Manager or the Alternative Investment Fund Manager) the processing of personal data that might actually process and store such data on systems that are not situated in the Grand Duchy of Luxembourg but in the Principality of Liechtenstein and that might be operated by a related company of such Processor. The Company undertakes not to transfer personal data to any third parties other than the Processor except if required by law or on the basis of a prior consent of the Investors.

Each Investor has a right of access to his/her/its personal data and may ask for a rectification thereof in case where such data is inaccurate or incomplete.

By subscribing to the Shares, each Investor consents to such processing of its personal data. This consent is formalised in writing in the Subscription Agreement used by the relevant intermediary.

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## GENERAL INFORMATION

### **Registered office of the Company**

23, Val Fleuri  
L-1526 Luxembourg  
Grand Duchy of Luxembourg

### **Board of Directors**

Daniel Klein, Chairman, Zurich  
Michel Maquil, Director, Luxembourg  
Dominique Valschaerts, Director, Luxembourg

### **Alternative Investment Fund Manager**

MC Square SA  
23, Val Fleuri  
L-1526 Luxembourg  
Grand Duchy of Luxembourg

### **Fund Administrator (Administrative and Registrar and transfer Agent)**

European Fund Administration SA  
Rue d'Alsace 2  
L-1122 Luxembourg  
Grand Duchy of Luxembourg

### **Depository**

Quintet Private Bank (Europe) SA  
43, Boulevard Royal  
L-2955 Luxembourg  
Grand Duchy of Luxembourg

### **Auditor**

KPMG Luxembourg  
39, avenue John F. Kennedy  
L-1855 Luxembourg  
Grand Duchy of Luxembourg



## DEFINITIONS

In this Memorandum, the following terms have the following meanings:

**1915 Act** means the Luxembourg act of 10 August 1915 on commercial companies, as amended from time to time;

**1993 Act** means the Luxembourg act of 5 April 1993 on the financial sector, as amended from time to time;

**2010 Act** means the Luxembourg act of 17 December 2010 relating to undertakings for collective investments, as may be amended from time to time;

**2013 Act** means the Luxembourg act of 12 July 2013 on AIFMs, as amended from time to time;

**2016 Act** means the Luxembourg act of 23 July 2016 relating to reserved alternative investment funds, as may be amended from time to time.

**Accounting Year** means a twelve (12) months period ending on 30 June;

**Affiliate** means

- a. in the case of a company: (i) any company which is its direct or indirect holding company or subsidiary or a direct or indirect subsidiary of that holding company or (ii) a company (or a direct or indirect subsidiary of a company) or other legal entity which controls or is controlled by the person concerned;
- b. in the case of an individual, the spouse or direct descendant and ascendants of any kind, and any company directly or indirectly controlled by such person and his associates within the meaning of paragraph (a) of this definition; or
- c. in the case of an entity other than a company, the members and any company directly or indirectly controlled by such person and his associates within the meaning of paragraph (a) of this definition.

**Annual Report** means the annual report in the meaning of article 38 of the 2016 Act;

**AIF** means an alternative investment fund as defined under the 2013 Act, i.e., any collective investment undertakings, including investment compartments thereof, which raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and do not require authorization pursuant to UCITSD;

**AIFM** is any legal person whose regular business is managing one or more AIFs;

**AIFMD** means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;

**Alternative Investment Fund Manager** means MC Square SA which is the Company's AIFM as further described in this Memorandum;

**Articles** means the articles of association of the Company, as amended from time to time;

**Auditor** means the auditor (*réviseur d'entreprises agréé*) of the Company which is KPMG Luxembourg;

**Business Day** means a full day on which banks are generally open for business in Luxembourg (excluding Saturdays and Sundays and public holidays);

**Class** means a class of Shares within a relevant Compartment (*catégorie d'actions*) as this term is understood under the 1915 Act;

**Commission Delegated Regulation** means Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing the AIFMD with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision;

**Company** means K&R SA, SICAV-FIAR;

**Company's Consent** means the written consent (which shall include electronic mail or other electronic communication and may consist of one or more documents (including "pdf" type electronic mail attachments) in similar form each signed by one or more of the Shareholders) of the Shareholders who together exceed 75% of the voting rights of the Company at the relevant time;

**Compartment** means a separate portfolio of assets established for one or more Classes of the Company which is invested in accordance with a specific investment objective. The features of each Compartment will be described in their relevant Special Section;

**Compartment's Consent** means, in relation to each Compartment and unless otherwise provided for in a Special Section, the written consent (which shall include electronic mail or other electronic communication and may consist of one or more documents (including "pdf" type electronic mail attachments) in similar form each signed by one or more of the Shareholders) of the Shareholders who together exceed 75% of the Shares issued by the relevant Compartment at the relevant time;

**CSSF** means the *Commission de surveillance du secteur financier*, the Luxembourg regulator for the financial sector;

**Depositary** means Quintet Private Bank (Europe) SA in its capacity as depositary of the Company;

**Director** means any director of the Company;

**EU** means European Union – Iceland, Liechtenstein and Norway as member states of the European Economic Association (EEA) assimilated to the EU member states within the limits of the treaties and agreements between the EU and the EEA;

**EUR** means the single currency of the member states of the Economic and Monetary Union;

**ESG** means Environmental, social and governance considerations.

**Expenses** has the meaning set out in Section 23 of the General Section;

**FATCA** means the U.S. Foreign Account Tax Compliance Act which was enacted as part of the U.S. Hiring Incentives to Restore Employment Act of 2010;

**Financial Instruments** means any financial instruments in the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time;

**General Meeting** means the general meeting of the Shareholders or, as the case may be, of relevant Compartment or of a relevant Class;

**General Section** means the general section of the Memorandum that sets out the general terms and conditions applicable to all Compartments of the Company, unless otherwise provided in any of the Special Sections;

**Initial Subscription Period** means the initial subscription period during which Shares may be subscribed for at an issuing price determined in the relevant Special Section;

**Indemnified Person** has the meaning given in Section 20 of the General Section;

**Institutional Investors** means investors which/who qualify as institutional investors according to the regulatory practice of the CSSF;

**Investment** means any investment of the relevant Compartment (whether directly or indirectly) including participations in companies or entities, Liquid Assets, shares, bonds, convertible loan stocks, options, warrants or other type of securities or financial instruments, loans (whether secured or unsecured), rights or interests;

**Investment Committee** means the investment committee established at the Alternative Investment Fund Manager to manage the relevant Compartment's portfolio;

**Investor** means any person contemplating to subscribe Shares and, where the context requires, shall include that person as a Shareholder;

**Kick-off Period** means the transitional period which is used for the building-up of the Company's portfolio and during which risk spreading requirements are not yet fulfilled;

**Late Trading** means the acceptance of any subscription, conversion or redemption request after the cut-off time determined for accepting that request on a relevant day and the execution of that request at the price based on the NAV applicable to the same day;

**Liquid Assets** means cash or cash equivalents, including, inter alia and without limitation, investments in units of money market funds, time deposits and regularly negotiated money market instruments the remaining maturity of which is less than twenty four (24) months, treasury bills and bonds issued by OECD member countries or their local authorities or by supranational institutions and organisations with EU, regional or worldwide scope as well as bonds admitted to official listing on a stock exchange or dealt on a Regulated Market, issued by first-class issuers and highly liquid;

**Luxembourg** means the Grand Duchy of Luxembourg;

**Luxembourg Law** means the applicable laws and regulations of the Grand Duchy of Luxembourg;

**Management Fee** means the management fee paid by the Company out of the relevant Compartment to the Alternative Investment Fund Manager in accordance with Section 23;

**Market Timing** means any market timing practice within the meaning of CSSF circular 04/146 or as that term may be amended or revised by the CSSF in any subsequent circular, i.e., an arbitrage method through which an investor systematically subscribes and redeems or converts shares of the same UCI within a short time period, by taking advantage of time differences or imperfections or deficiencies in the methods of determination of the net asset value of the UCI;

**Memorandum** means this confidential offering memorandum, as amended or supplemented from time to time;

**NAV** means the net asset value of the Company, of each Compartment or Class and of each Share as determined in accordance with Section 12;

**Processor** means an entity (e.g. the Alternative Investment Fund Manager) to which the processing of personal data of an Investor may be sub-contracted by the Company;

**Professional Investors** means Investors which/who qualify as professional investors within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended;

**RAIF or FIAR** means any reserved alternative investment fund under the 2016 Act;

**RCSL** means the *Registre du Commerce et des Sociétés Luxembourg*, the trade and companies' register of Luxembourg;

**Redemption Fee** means the fee charged by the relevant Compartment or Class to redeem Shares upon request of a Shareholder as determined in the Memorandum, the Subscription Agreement and/or any side letter, provided that the Subscription Agreement or any side letter does not conflict with the provisions of the Articles and the Memorandum;

**Reference Currency** means, in relation to each Compartment or Class, the currency in which the NAV of that Class is calculated, as stipulated in the Memorandum;

**Register** means the register of Shareholders of the Company;

**Regulated Market** means a regulated market within the meaning of Directive 2004/39/EC of the European Parliament and of the Council dated 21 April 2004 on markets in financial instruments, as amended, or any other market established in the EU which is regulated, operates regularly and is recognized and open to the public;

**RESA** means *Recueil Electronique des Sociétés et Associations*, the official gazette of Luxembourg;

**Restricted Person** has the meaning set out in Section 9 of the General Section;

**Section** means any section of this Memorandum;

**SFDR** means the Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector. The objective of SFDR is to harmonise transparency rules with regards the integration of sustainability risks and the consideration of adverse sustainability impacts in the Company's investment decision processes and the provision of sustainability-related information.

**SICAV-FIAR** means *société d'investissement à capital variable – fonds d'investissement alternatif réservé*, i.e., investment company with variable company – reserved alternative investment fund under chapter 3 of the 2016 Act;

**Side Pocket Class** means a specific Class created by the Board to transfer Side Pocket Investments with the sole purpose to be realized as further described under Section 7.9 of the General Section;

**Side Pocket Investments** means any Investment that the Board transfers to Side Pocket Class in accordance with Section 7.10;

**Side Pocket Shares** means Shares which are issued by the Side Pocket Class;

**Service Agreements** means any contractual arrangement between the Company and any Service Provider including the Alternative Investment Fund Manager or any contractual arrangement between the Alternative Investment Fund Manager and any Service Provider, provided the services are provided in relation to the management or the marketing of the Company;

**Service Providers** means the Alternative Investment Fund Manager, the Depositary or any other person providing services to the Company from time to time;

**Set-Up Costs** has the meaning set out in Section 23;

**Special Section** means each and every supplement to this Memorandum describing the specific features of a Compartment. Each such supplement is to be regarded as an integral part of the Memorandum;

**Shareholder** means an owner of Shares;

**Share** means any share issued by the Company (i.e., by any Compartment or Class);

**Subscription Agreement** means the subscription agreement entered into by a first-time Investor and the Company to subscribe Shares of the relevant Compartment and Class;

**Subscription Fee** means the fee charged by the Company upon the subscription or the issue of Shares as determined in the Memorandum, the Subscription Agreement and/or any side letter, provided that the Subscription Agreement or the side letter does not conflict with the provisions of the Articles and the Memorandum;

**Temporary Investments** means holding of cash and highly liquid placements or investments which are made on a temporary basis pending further use including distribution to Shareholders or reinvestment in accordance with the investment policy;

**Transfer** has the meaning set out in Section 8 of the General Section;

**UCI** means any type of undertakings of collective investment either under Luxembourg Law or under any law of any other jurisdiction;

**UCITSD** means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on certain undertakings for collective investment in transferable securities (UCITS);

**USD** means the United States Dollar, the currency of the United States of America;

**Valuation Date** has the meaning set out in Section 12 of the General Section; and

**Well-Informed Investors** means any well-informed investors within the meaning of article 2 of the 2016 Act. There exist three categories of well-informed investors, Institutional Investors, Professional Investors and Experienced Investors. For the avoidance of doubt, Directors and members of the Investment Committee are regarded as Well-Informed Investors for the purpose of article 2 of the 2016 Act.

## GENERAL SECTION

The General Section applies to all Compartments of the Company. The specific features of each Compartment and Class are set forth in the Special Sections.

### 1. COMPANY

#### Corporate form - Legal regime

- 1.1 The Company is a Luxembourg *société d'investissement à capital variable - fonds d'investissement alternatif réservé* (investment company with variable capital – reserved alternative investment fund) under the 2016 Act, the 1915 Act and the Articles.
- 1.2 The Company has adopted the form of a public limited liability company (*société anonyme*). The Company is in the process of being registered with the RCSL and its Articles will be published in RESA.
- 1.3 The capital of the Company is at all times equal to the value of its net assets. The Company was incorporated with an initial capital of EUR 30,000 represented by Shares of Class B issued within K&R – European Value Fund. The share capital increased by the issue premium (if any) of the Company reached EUR 1,250,000 (or the equivalent amount in any other currency) within a period of less than twelve (12) months following its incorporation (and may not be less than this amount thereafter). The combined accounts of the Company are held in EUR.

#### Umbrella structure - Compartments and Classes

##### *Compartments*

- 1.4 The Company has an umbrella structure consisting of one or several Compartments. A separate portfolio of assets is maintained for each Compartment and is invested in accordance with the investment objective and policy applicable to that Compartment. The investment objectives, policy, as well as the other specific features of each Compartment are set forth in the relevant Special Section.
- 1.5 The Company is one single legal entity. However, in accordance with article 49 of the 2016 Act, the rights of the Investors and creditors relating to a Compartment or arising from the setting-up, operation and liquidation of a Compartment are limited to the assets of that Compartment. The assets of a Compartment are exclusively dedicated to the satisfaction of the rights of the Investors relating to that Compartment and the rights of those creditors whose claims have arisen in connection with the setting-up, operation and liquidation of that Compartment.
- 1.6 Each Compartment is treated as a separate entity and operates independently, each portfolio of assets being invested for the exclusive benefit of this Compartment. A purchase of Shares relating to one particular Compartment does not give the holder of such Shares any rights with respect to any other Compartment.

##### *Classes*

- 1.7 Within each Compartment, the Board may decide to issue one or more Classes the assets of which will be commonly invested but subject to different fee structures, allocation of income, distribution, marketing targets, currency or other specific features as determined by

the Board. A separate NAV per Share, which may differ as a consequence of these variable factors, will be calculated for each Class.

- 1.8 The Company may, at any time, create additional Classes whose features may differ from the existing Classes. Upon creation of new Classes, the Memorandum will be updated.

#### **Term of the Company – Term of the Compartments**

- 1.9 The Company has been incorporated with an unlimited period of time provided that the Company will however be automatically put into liquidation upon the termination of a Compartment if no further Compartment is active at that time.
- 1.10 Compartments may be created for an unlimited or a limited period of time. If a Compartment is created for a limited period of time, it will be dissolved at the termination date as determined in the relevant Special Section.

#### **Listing**

- 1.11 It is not intended to list the Shares on a stock exchange or on a Regulated Market.

## **2. MANAGEMENT AND ADMINISTRATION**

#### **Board**

- 2.1 The Company is managed by its board of directors (the **Board**). The Board is composed by at least three (3) Directors.
- 2.2 As of the date of this Memorandum, the following persons have been nominated as Directors:
- 2.2.1 Daniel Klein, Chairman of the Board, Zurich,
- 2.2.2 Michel Maquil, Director, Luxembourg, and
- 2.2.3 Dominique Valschaerts, Director, Luxembourg.
- 2.3 Directors are nominated out of:
- 2.3.1 A list of candidates proposed by Shareholders of Class B within each Compartment; and
- 2.3.2 A list of candidates proposed by Shareholders of any Class other than Class B within each Compartment, if any such list has been established.
- 2.4 In accordance with article 14.7 of the Articles, at least two Directors and not less than half of all Directors must be selected out of the list of candidates proposed by Shareholders of Class B within each Class. If Shareholders of any other Class within each Compartment do not propose a sufficient number of candidates on their list or do not propose any candidate, the remaining offices respectively all offices may be filled-in by Directors selected out the list of candidates proposed by B Shareholders within each Compartment.

#### **Alternative Investment Fund Manager**

- 2.5 The Company has appointed MC Square SA (the **Alternative Investment Fund Manager**) as its AIFM. The relationship between the Company and the Alternative Investment Fund

Manager is subject to the terms of the alternative investment fund management agreement of 4 March 2019, as amended between the parties from time to time (the **AIFM Agreement**). The Company and the Alternative Investment Fund Manager may terminate the AIFM Agreement upon three months prior written notice given by one party to the other.

- 2.6 The Alternative Investment Fund Manager is authorized as an AIFM under, and subject to, Chapter 2 of the 2013 Law and is authorised to act as external AIFM of AIFs within the meaning of article 4(1), a) of the 2013 Law. The AIFM is under the ongoing supervision of the CSSF.

*Functions*

- 2.7 The Alternative Investment Fund Manager will assume for the Company in accordance with the AIFM Agreement:

2.7.1 Portfolio management; and

2.7.2 Risk management.

*Obligations*

- 2.8 The Alternative Investment Fund Manager adopted policies and procedures to comply, inter alia, with operating conditions under article 11 of the 2013 Act and chapter III of the Commission Delegated Regulation, conflicts of interest under article 13 of the 2013 Act and articles 30 et seq. of Commission Delegated Regulation and valuation of Investments under article 17 of the 2013 Act and articles 67 et seq. of Commission Delegated Regulation.

- 2.9 The Alternative Investment Fund Manager adopted a remuneration policy in accordance with article 12 of the 2013 Act. The Alternative Investment Fund Manager did not establish a remuneration committee. The Alternative Investment Fund Manager takes the necessary steps to ensure that the remuneration policy adopted by an agent is equally as effective as those under article 12 of the 2013 Act.

*Monitoring of leverage*

- 2.10 The Alternative Investment Fund Manager assures the risk management of the Company. In this context, it will regularly monitor the leverage exposure for the Compartments.

- 2.11 The 2013 Act defines leverage as any method by which an AIFM increases the exposure of an AIF it manages whether through borrowing of cash or transferable securities, or leverage embedded in derivative positions or by other methods. The Commission Delegated Regulation clarifies that the AIFM shall calculate the ratio between the investment exposure and the NAV, as which leverage has to be expressed, through

2.11.1 the gross method by adding the absolute values of all portfolio positions, including the sum of notional of the derivative instruments used but excluding cash and cash equivalents, and

2.11.2 the commitment method by taking into account netting and hedging arrangements and not excluding cash and cash equivalents.

- 2.12 Principally, the leverage for Compartments which do not borrow or use derivatives is expressed as a maximum of 100% under both calculation methods – which means that these Compartments do not use leverage under the 2013 Act.



2.13 The leverage for Compartments which borrow or use derivatives is detailed in the relevant Special Section. The actual leverage will be disclosed in the Annual Report.

2.14 Investors should note the risks involving leverage described in Sections 24.18 sqq.

*Capital – Own funds*

2.15 Information on the Alternative Investment Fund Manager’s capital, own funds and professional indemnity insurance is available free of charge at the registered office of the Alternative Investment Fund Manager.

*Remuneration*

2.16 The Alternative Investment Fund Manager will receive a Management Fee paid by the Company out of the net assets of the Company in accordance with the AIFM Agreement.

**Administrative Agent and Transfer and Registrar Agent (Fund Administrator)**

2.17 The Company has appointed European Fund Administration SA (the **Fund Administrator**). The relationship between the Company and the Fund Administrator is subject to the terms of the administrative services agreement of 4 March 2019, as amended between the parties from time to time (the **Fund Administration Agreement**). The Company and the Fund Administrator may terminate the Fund Administration Agreement upon three months prior written notice given by one party to the other.

2.18 The Fund Administrator will assume for the Company in accordance with the Fund Administration Agreement:

2.18.1 Accounting services;

2.18.2 Calculation of NAV;

2.18.3 Maintenance of Register; and

2.18.4 Issuing, redeeming and converting, where possible, Shares.

**Domiciliary Agent**

2.19 The Company has appointed MC2 Corporate Services Sàrl as its Domiciliary Agent. The relationship between the Company and the Domiciliary Agent is subject to the terms of the domiciliation agreement of 4 March 2019 as amended between the parties from time to time (the Domiciliation Agreement). The Company and the Domiciliary Agent may terminate the Domiciliation Agreement upon three months prior written notice given by one party to the other.

**Depositary – Paying agent**

*Legal information*

2.20 The Company has appointed Quintet Private Bank (Europe) SA (the **Depositary**) as its depositary bank . The relationship between the Company and the Depositary is subject to the terms of the depositary and paying agency agreement of 4 March 2019, as amended between the parties from time to time (the **Depositary Agreement**). The Company and the Depositary may terminate the Depositary Agreement upon three months prior written notice given by one party to the other.

2.21 Beside the Depositary Agreement, the Company has also appointed Quintet Private Bank (Europe) SA to act as Paying Agent.

2.22 The Depositary is a financial institution domiciled in Luxembourg with its registered office in 43 Boulevard Royal, L-2955 Luxembourg and is registered in the RCSL number B 6395.

*Obligations*

2.23 The Depositary is entrusted with safekeeping the assets of the Company. This may include Financial Instruments, which can be deposited, either directly by the Depositary or, in the scope permitted by law, by any third-party or sub-custodian whose guarantees can be considered as equivalent to those of the Depositary, i.e. in the case of Luxembourg institutions, credit institutions as defined in the 1993 Act or in the case of foreign institutions, financial institutions which are subject to supervision considered equivalent to the requirements under community law.

2.24 The Depositary shall also ensure that the cash flows of the Company are monitored properly and in particular that the subscription amounts are received and all cash of the Company is booked properly to accounts, which are opened (i) in the name of the Company or a relevant Compartment or (ii) in the name of the Depositary acting on behalf of the Company.

2.25 The Depositary shall also ensure that:

2.25.1 The sale, issue, redemption, pay out and cancellation of Shares are carried out in accordance with Luxembourg Law and the Articles;

2.25.2 The value of the Shares is calculated in accordance with Luxembourg Law and the Articles;

2.25.3 The instructions of the Company are followed, unless these instructions violate Luxembourg Law or the Articles;

2.25.4 In the case of fund asset transactions, the counter value is transferred to the Company within the usual time period; and

2.25.5 The income of the Company is used in accordance with Luxembourg Law and the Articles.

2.26 The Depositary shall provide the Management Company with a complete inventory of all assets of each Compartment on a regular basis.

*Delegation of tasks*

2.27 In accordance with the provisions of the 2016 Act and the Depositary and Paying Agent Agreement, under certain conditions and to effectively fulfil its duties, the Depositary may delegate its depositary obligations in relation to the assets of the Company, including the safekeeping of assets and, in the case of assets which cannot be held in custody due to their nature, the verification of the ownership structure and the management of records relating to these assets, in accordance with the 2016 Act in part or in full to one or more third parties, which are named by the Depositary from time to time.

2.28 To ensure that each third party has the necessary skills and expertise and maintains these skills and expertise, the Depositary shall act with due care and diligence when selecting and appointing third parties.

- 2.29 The Depositary will also regularly check whether the third party fulfils all applicable statutory and regulatory requirements and subjects all third parties to continuous monitoring to ensure that the obligations of the third parties continue to be fulfilled in a competent manner.
- 2.30 The liability of the Depositary remains unaffected by the fact that the custody of the assets of the Company is transferred in full or in part to a third party.
- 2.31 In the case of a loss of a Financial Instrument held in custody, the Depositary shall return a Financial Instrument of the same type or a corresponding amount to the Company without delay, unless the loss is based on external events, which could not reasonably be controlled by the Depositary and the consequences of which could not be avoided in spite of reasonable efforts.
- 2.32 Foreign securities that are purchased or sold abroad or which are held by a Depositary domestically or abroad are often subject to foreign jurisdiction and legal systems. The rights and duties of the Depositary or the Company are therefore determined according to this legal system, which may also provide for the disclosure of the Investors' name. Investors should be aware when subscribing Shares that the Depositary must provide information to this effect to foreign authorities as required, as it is obligated to do so by legal and/or supervisory regulations.

#### **Auditor**

- 2.33 KPMG Luxembourg (the **Auditor**) has been appointed by the General Meeting as the statutory auditor (*réviseur d'entreprises agréé*) of the Company.
- 2.34 The Auditor shall fulfil the duties prescribed under the 2016 Act.

### **3. INVESTMENT OBJECTIVE, STRATEGY AND RESTRICTIONS**

#### **Investment objective and strategy**

- 3.1 The investment objective and strategy of each Compartment is as set out in respect of that Compartment in the relevant Special Section.
- 3.2 There can be no guarantee that the investment objectives of any Compartment will be met.
- 3.3 In principle, any Compartment may invest (directly or indirectly) in any kind of assets (including derivatives).

#### **Investment Restrictions**

- 3.4 Unless otherwise provided for in the relevant Special Section in relation to a particular Compartment:

##### *General*

- 3.5 A Compartment shall at latest after the Kick-Off Period not be invested for more than 30% of its assets in a single Investment. This restriction ceases to be applicable when a Compartment is divesting with a view to be dissolved.
- 3.6 The restriction set out under Section 3.5 above is not applicable to the acquisition of:

- 3.6.1 Units, shares or interests of UCIs if the latter are subject to risk diversification requirements comparable to those set out in the CSSF circular 07/309; and
  - 3.6.2 Securities issued or guaranteed by a member state of the OECD or by its local authority or by supranational institutions and organisations with European, regional or worldwide scope.
- 3.7 Each compartment of a target UCI with multiple compartments is considered as a distinct target fund for the purpose of the Investment Restrictions and limits set out under Sections 3.5 and 3.6 above provided that the principle of segregation of the assets and liabilities of the different compartments is ensured.

*Borrowing*

- 3.8 Unless otherwise stated in the applicable Special Section, each Compartment may borrow permanently (through loans, repurchase obligations or otherwise either directly or at the level of any intermediary vehicle) and for investment purposes and secure those borrowings with liens or other security interests in, or mortgages on, its assets (or the assets of any of its intermediary vehicles).
- 3.9 The applicable leverage limitation only applies on the date where the debt is incurred. It shall not be an on-going obligation of the Company or of the Alternative Investment Fund Manager to meet this constraint for a relevant Compartment by reducing its indebtedness as a result of a decline in the value of any of its existing Investments.

*Investment through intermediary vehicles*

- 3.10 Investments may be made for the account of a Compartments through one or more intermediary vehicles. The Company will seek to fully control any such intermediary vehicles, but may also hold Investments through co-investment arrangements where the Company does not keep control over the relevant intermediary vehicle.
- 3.11 An Investment into an intermediary vehicle should be ignored for the purpose of the Investment Restrictions and the underlying investments of the intermediary vehicle should be treated as if they were direct investments made by the Company.

*Kick-off Period*

- 3.12 The Investment Restrictions may not be complied with during the Kick-off Period, i.e., during a transitional period as will be set out in respect of each Compartment in that Compartment's Special Section.

*Investments by Compartments into other Compartments*

- 3.13 A Compartment (the **Investing Compartment**) may, subject to the conditions provided for in the Special Section for this Investing Compartment, subscribe, acquire and/or hold Shares to be issued or issued by another Compartment (a **Receiving Compartment**), provided that:
- 3.13.1 The Receiving Compartment does not invest in the Shares issued by the Investing Compartment; and
  - 3.13.2 The voting rights attached to the relevant Shares held by the Investing Compartment will be suspended for as long as they are held by the Investing

Compartment and without prejudice to the appropriate accounting as well as the periodic reports; and

- 3.13.3 In any event, for as long as these Shares are held by the Investing Compartment, their value will not be considered for the calculation of the net assets for the verification of the minimum threshold of the net assets pursuant to the 2016 Act.

*Compliance with CSSF Circular 02/77*

- 3.14 With respect to the protection of Investors in case of non-compliance with the investment restrictions applicable to the Company, the Company intends to comply with the principles and rules set out in CSSF circular 02/77 of 27 November 2002 (the **CSSF Circular 02/77**), subject to what is specified in each Special Section.

*Sustainability*

- 3.15 The Company is committed to make investment in the way which it believes to be in the best interests of the investors and this in a long-term perspective. The Company takes into account the risks arising from sustainability factors in the meaning of SFDR when managing the Compartments. The Company considers sustainability risks in its investment decisions besides the common financial metrics as well as the other portfolio specific risks. It is important to note however, that exposure to sustainability risk does not necessarily mean that the Company will refrain from taking or maintaining a position in the investment. Rather, the Company will consider the risk together with other material factors in the context of the investee company or issuer, and the investment objective. There are no restrictions on the investment universe of a Compartment in relation to sustainability factors and the Company does not automatically screen out investments. The Company can invest in any investments it believes could create beneficial long-term returns, in line with the Memorandum.

The Company does not take into account the EU criteria for environmentally sustainable economic activities in the meaning of the Taxonomy Regulation.

#### **4. SHARE CAPITAL AND SHARES**

##### **Investment by Well-Informed Investors**

- 4.1 Shares are exclusively reserved for Well-Informed Investors. The Company will not issue Shares to any Investor who is not a Well-Informed Investor and will not give effect to any Transfer if the transferee is not a Well-Informed Investor.
- 4.2 The Registrar and Transfer Agent reserves the right to request such information as is necessary to verify the identity of an Investor and its status in regard to the qualification as a Well-Informed Investor. In the event of delay or failure by the Investor to produce any information required for verification purposes, the Company may refuse to accept the Subscription Agreement.
- 4.3 If Shares are held by a nominee on behalf of an Investor, the Investor must be a Well-Informed Investor. For the avoidance of doubt, Shares subscribed by a bank or an investment firm for the account of clients managed under a discretionary portfolio management mandate are not deemed nominees in the meaning of this Section.

##### **Description of the Shares**

### *Capital – Compartments – Classes*

- 4.4 The capital of the Company is represented by fully paid Shares with no par value (together with share premiums, if any) and will be represented by different Classes within each Compartment, the features of which will be as set out in respect of each Compartment in the applicable Special Section.
- 4.5 The Company adopted the variable capital structure, i.e., its share capital will automatically be adjusted when additional Shares are issued or outstanding Shares are redeemed and no special announcement or publicity is necessary in relation thereto.

### *Form of the Shares – Register*

- 4.6 Shares are issued and will remain in registered form (*actions nominatives*) only. Shares are not represented by certificates.
- 4.7 The Register will be kept by the Fund Administrator – as registrar – on behalf of the Company. The Register will contain the name of each owner of registered Shares, his/her/its residence or elected domicile as indicated in the Subscription Agreement and the number of Shares, Class or series, if any, held by it and, where applicable, the Transfer of Shares and the dates of the Transfer. The ownership of Shares is established by the entry in the Register.
- 4.8 Each Shareholder must provide an address and email address to which all notices and announcements are sent. Any changes in the address and email address must be notified to the Company or the Fund Administrator.
- 4.9 The Company will recognise only one holder per Share. In case a Share is held by more than one person, the Company has the right to suspend the exercise of all rights attached to that Share until one person has been appointed as sole owner in relation to the Company. The same rule shall apply in the case of conflict between a usufruct holder (*usufruitier*) and a bare owner (*nu-proprétaire*) or between a pledgor and a pledgee.
- 4.10 Without prejudice to Section 8 of this General Section, title to Shares in registered form is transferred upon registration of the name of the transferee in the Register.
- 4.11 Fractional Shares will be issued to the nearest ten thousandth of a Share, and such fractional Shares will not be entitled to vote (except where their number is so that they represent a whole Share, in which case they confer a voting right) but will be entitled to a participation in the net results and in the proceeds of liquidation attributable to the relevant Class on a pro rata basis.

### *Voting rights*

- 4.12 Each Share is entitled to one vote at any General Meeting unless the Company decided to issue. Shares shall have no pre-emptive subscription rights. All Shareholders have the right to vote at a General Meeting. This vote can be exercised in person or by power of attorney.

## **5. SUBSCRIPTION OF SHARES**

### **Legal implications when investing into the Company**

- 5.1 Investors are legally bound by the terms of their Subscription Agreement, the Articles and this Memorandum.

- 5.2 The relationship between the Investors and the Company shall be governed and construed in all respects in accordance with Luxembourg Law.
- 5.3 Any dispute or controversy between an Investor and the Company shall be submitted to the exclusive jurisdiction of the Courts of Luxembourg City. In as far as applicable, the recognition and enforcement of a judgment given by the courts of an EU Member State within the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (the Regulation 1215/2012) will be refused by the Luxembourg courts if on the application of (i) any interested party (in case of recognition) or (ii) the person against whom enforcement is sought (in case of enforcement), the Luxembourg courts find that any of the circumstances set out in articles 45 or 46 of Regulation 1215/2012 exist. No re-examination of the merits of any claim resulting in such foreign judgment would be made, save for the examination of the compliance of such judgment with Luxembourg public order (*ordre public*).
- 5.4 Unless otherwise provided for under Luxembourg Law, a relevant Investor as an individual shareholder of the Company does in principle not have a direct right against any of the Service Providers including the Alternative Investment Fund Manager or the Depositary unless the damage suffered by the Investor was personal and confirmed by a decision of a Luxembourg court in accordance with general principles of civil liability as applicable in Luxembourg. The Company represented by its Board is in principle entitled (and to a certain extent obliged) to claim against the relevant Service Provider.

#### **Issuance of Shares – Subscription Agreement – Payment – Subscription Fee**

- 5.5 The Company may issue fully paid Shares at any time as stated in this Section 5. Each new Investor subscribing for Shares must enter with the Company into the Subscription Agreement, unless otherwise stated in the relevant Special Section or accepted by the Board.
- 5.6 The payment for subscriptions of Shares or otherwise shall be made in whole as of the date as determined by the Company and as indicated in the relevant Special Section or in the Subscription Agreement.
- 5.7 The Company may determine any other subscription conditions such as default interests or restrictions on ownership. Such other conditions shall be disclosed and more fully described in the relevant Special Section. The Company may also impose restrictions on the frequency at which Shares shall be issued. The Company may, in particular, decide that Shares shall only be issued during one or more Initial Subscription Periods or at such other frequency as provided for in the Special Section.
- 5.8 The Company may, in its absolute discretion, accept or reject (in whole or in part) any request for subscription for Shares. In the event that the Company decides to reject any application to subscribe for, or the purchase of Shares, the monies transferred by a relevant applicant will be returned to the Investor without undue delay (unless provided for by law or regulations).
- 5.9 The Company is entitled to levy a Subscription Fee. The applicable Subscription Fee will be stipulated in the relevant Special Section and/or the Subscription Agreement.
- 5.10 The Company may agree to issue Shares as consideration for a contribution in kind of assets, in accordance with Luxembourg law, in particular in accordance with the obligation to deliver a valuation report from a certified auditor (*réviseur d'entreprises agréé*), and provided that such assets are in accordance with the investment objectives and policies of

the relevant Compartment. All costs related to the contribution in kind are borne by the Shareholder acquiring shares in this manner.

## **6. CONVERSION OF SHARES**

- 6.1 Unless otherwise stated in the relevant Special Section, Shareholders are not allowed to convert all, or part, of the Shares of a given Class into Shares of the same Class of another Compartment. Likewise, unless otherwise stated in the relevant Special Section, conversions from Shares of one Class of a Compartment to Shares of another Class of either the same or a different Compartment are prohibited.
- 6.2 If conversion of Shares is allowed between Classes of the same Compartment or between Shares pertaining to a Class into Shares of the same Class of another Compartment, then the applicable terms and conditions to conversion of Shares shall be as set forth in the relevant Special Section(s).

## **7. REDEMPTION OF SHARES**

### **Redemption of Shares on the request of a Shareholder**

- 7.1 Unless otherwise provided in the relevant Special Section, Shareholders are entitled to request the redemption of their Shares in accordance with the relevant Special Section, the Subscription Agreement or any side letter.
- 7.2 A Shareholder redeeming its Shares will receive an amount per Share redeemed equal to the NAV per Share as of the relevant Valuation Date for the relevant Compartment and Class less, as the case may be, the applicable Redemption Fee.
- 7.3 Redemption of Shares may be suspended for certain periods of time as described under Section 14 of this General Section.
- 7.4 The Company reserves the right to reduce proportionally redemption requests for redemptions in a relevant Compartment or Class to be executed as of a relevant Valuation Date whenever the total proceeds to be paid for those Shares exceed 10% (ten per cent) of the NAV of that Compartment or Class. The portion of the non-proceeded redemption requests will then be proceeded by priority to later requests on any subsequent Valuation Dates (but subject always to the foregoing ten per cent limit) and in compliance with the principle of equal treatment of Shareholders of the relevant Compartment or Class.
- 7.5 Redemption requests are irrevocable (except during any period where the determination of the NAV, the issue, redemption and conversion of Shares is suspended). The Company reserves the right not to redeem any Shares if it has not been provided with evidence satisfactory to the Company that the redemption request was made by a Shareholder of the Company. Failure to provide appropriate documentation to the Alternative Investment Fund Manager may result in the withholding of redemption proceeds.
- 7.6 The Board may, at the request of a Shareholder, agree to make, in whole or in part, a distribution in-kind of securities or other assets of a Compartment to the relevant Shareholder in lieu of paying to that Shareholder redemption proceeds in cash. The Board will agree to do so, if they determine that such a transaction would not be detrimental to the best interests of the remaining Shareholders of the relevant Compartment. Such redemption will be effected at the NAV per Share of the relevant Compartment or Class which the



Shareholder is redeeming, and thus will constitute a pro rata portion of the Compartment's assets attributable in that Compartment or Class in terms of value. The assets to be transferred to this Shareholder shall be determined by the Board, with regard to the practicality of transferring the securities or assets of the Compartment and continuing participants therein and to the Shareholder. The relevant Shareholder may incur brokerage or local tax charges on any transfer or sale of securities or assets so received in satisfaction of redemption. The net proceeds from this sale by the redeeming Shareholder of these securities or assets may be more or less than the corresponding redemption price of Shares due to market conditions or differences in the prices used for the purposes of such sale or transfer and the calculation of the NAV per Share. The selection, valuation and transfer of securities or assets will be subject to the review and approval of the Auditor.

### **Redemption of Shares on the request of the Company**

- 7.7 The Company may, *inter alia*, compulsory redeem the Shares
- 7.7.1 Held by a Restricted Person in accordance with Section 9.1 of the General Section;
  - 7.7.2 In case of liquidation or merger of Compartments or Classes;
  - 7.7.3 Held by a Shareholder who fails to make, within a specified period of time determined by the Company, any required contributions or certain other payments to the relevant Compartment (including the payment of any interest amount or charge due in case of default), in accordance with the terms of the Subscription Agreement in accordance with the provisions of the relevant Compartment's Special Section; or
  - 7.7.4 In all other circumstances, in accordance with the terms and conditions set out in the Subscription Agreement, the Articles and this Memorandum.
- 7.8 A compulsory redemption of the Shares cannot be abusive, must be justified and either be in the interest of the Company and the relevant Shareholders or required for operational or other reasons.

### **Side Pocket Class**

- 7.9 The Board can create a Side Pocket Class within each Compartment with the sole purpose to:
- 7.9.1 Protect redeeming Shareholders from being paid an amount which does not take into account the ultimate realisation value of Side Pocket Investments;
  - 7.9.2 Protect Investors contemplating to subscribe Shares to be exposed to Side Pocket Investments;
  - 7.9.3 Protect non-redeeming Shareholders against the disposal of part or all of Side Pocket Investments below their fair value; or
  - 7.9.4 Avoid the suspension of the calculation of the NAV and the execution of any subscription or redemption of Shares further to Section 14.
- 7.10 The Board may decide to designate one or more Investments as Side Pocket Investments if the relevant Investment

- 7.10.1 Lacks a readily assessable market value;
  - 7.10.2 Is hard to value; or
  - 7.10.3 Is illiquid.
- 7.11 The Board is entitled to compulsory convert on a pro rata portion a part of the outstanding Shares of the relevant Class into Side Pocket Shares. The issue price of a Side Pocket Share will be based on the latest NAV of the Share which is converted into a Side Pocket Share and which takes into account the latest value as retained for the Side Pocket Investments net of any costs and deferred fees attributable to the Side Pocket Class.
- 7.12 Side Pocket Shares will be treated as if requested to be redeemed as of the date of their creation – it results that holders of Side Pocket Shares do not need (and cannot) requesting the redemption of Side Pocket Shares.
- 7.13 The priority objective of the Board is to realise or dispose Side Pocket Investments in the best interest of the Shareholders. Any net proceeds collected from the realisation or the disposal of Side Pockets Investments are in principle used to redeem Side Pocket Shares.
- 7.14 The Side Pocket Class has its own accounting and its NAV will be calculated at least once per year. By derogation to Section 12, the value of Side Pockets Investments can be set at the value retained when the relevant Side Pocket Investment has been transferred to the Side Pocket Class less any impairment or write-off decided in good faith and with the prudent care of a salaried agent. Investors should be aware that the NAV of the Side Pocket Class is not determined with the same degree of certainty as the NAV of any other Class and that the NAV of the Side Pocket Class is for information purpose only.
- 7.15 If a Side Pocket Class is created by the Board, the Alternative Investment Fund Manager will periodically (on a quarterly basis) disclose the Shareholders the percentage of Investments allocated within the relevant Compartment to the Side Pocket Class in accordance with article 21(4) (a) of the 2013 Act.

## **8. TRANSFER RESTRICTIONS**

- 8.1 No sale, assignment, transfer, grant of a participation in, pledge, hypothecation, encumbrance or other disposal (each a **Transfer**) of all or any portion of any Shareholder's Shares, whether voluntary or involuntary, shall be valid or effective if:
- 8.1.1 The Transfer would result in a violation of any Luxembourg Law or the laws and regulations of any other jurisdiction (including, without limitation, the US Securities Act, any securities laws of the individual states of the United States, or ERISA) or subject the Company, a Compartment or an intermediary vehicle to any other adverse tax, legal or regulatory consequences as determined by the Company;
  - 8.1.2 The Transfer would result in a violation of any term or condition of the Articles or of this Memorandum; and
  - 8.1.3 The Transfer would result in the Company, a Compartment or an intermediary vehicle being required to register as an investment company under the United States Investment Company Act of 1940, as amended.
- 8.2 It is a condition for any Transfer (whether permitted or required)

- 8.2.1 To be approved by the Board, such approval not to being unreasonably withheld;
  - 8.2.2 That the transferee is not a Restricted Person;
  - 8.2.3 Not to violate any laws or regulations (including, without limitation, any securities laws) applicable to it; and
  - 8.2.4 That the transferee enters into a Subscription Agreement in respect of the relevant Shares so transferred.
- 8.3 The Company, in its sole and absolute discretion, may condition such Transfer upon the receipt of an opinion of responsible counsel which opinion shall be reasonably satisfactory to the Company.
- 8.4 The transferor shall be responsible for and pay all costs and expenses (including any taxation) arising in connection with any such permitted Transfer, including reasonable legal fees arising in relation thereto incurred by the Company or its Affiliates and stamp duty or stamp duty reserve tax (if any) payable. The transferor and the transferee must indemnify the Indemnified Persons, in a manner satisfactory to the Company against any claims and expenses to which the Indemnified Persons may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferor or transferee in connection with such Transfer. In addition, each Shareholder agrees to indemnify the Company (or the relevant Compartment) and each Indemnified Person from any claims and Expenses resulting from any Transfer or attempted Transfer of its Interests in violation of this Memorandum (and the terms of their Subscription Agreement).
- 8.5 No Transfer of all or any part of any Shareholder's Shares in any Compartment, whether direct or indirect, voluntary or involuntary, shall be valid or effective if in breach of the additional restrictions on Transfer set out in the relevant Special Section (if any).

## **9. OWNERSHIP RESTRICTIONS**

- 9.1 The Company may restrict or prevent the ownership of Shares by any individual or other entity:
- 9.1.1 If in the opinion of the Board such holding may be detrimental to the Company or a Compartment;
  - 9.1.2 If it may result (either individually or in conjunction with other Investors in the same circumstances) in:
    - (a) the Company or a Compartment incurring any liability for any taxation whenever created or imposed and whether in Luxembourg, or elsewhere or suffering pecuniary disadvantages which the same might not otherwise incur or suffer;
    - (b) the Company or a Compartment being subject to the U.S. Employee Retirement Income Security Act of 1974, as amended; or
    - (c) the Company or a Compartment being required to register its Shares under the laws of any jurisdiction other than Luxembourg (including, without limitation, the US Securities Act or the US Investment Company Act);

- 9.1.3 If it may result in a breach of any law or regulation applicable to the relevant individual or legal entity itself, the Company or any Compartment, whether Luxembourg Law or any other law; and in particular if a relevant Shareholder does not qualify as a Well-Informed Investor or has lost such qualification for whatever reason; or
- 9.1.4 If as a result thereof the Company or a Compartment may become exposed to tax disadvantages or other financial disadvantages that it would not have otherwise incurred;

(such individual or legal entities are to be determined by the Board and are defined herein as **Restricted Persons**). A person or entity that does not qualify as Well-Informed Investor is regarded as a Restricted Person.

9.2 For such purposes the Company may:

- 9.2.1 Decline to issue any Shares and decline to register any Transfer of Share, where such registration or Transfer would result in legal or beneficial ownership of such Shares by a Restricted Person; and
- 9.2.2 At any time require any person whose name is entered in the Register or who seeks to register a Transfer in the Register to deliver to the Company any information, supported by affidavit which it may consider necessary for the purpose of determining whether or not beneficial ownership of such Shareholder's Shares rests with a Restricted Person, or whether such registration will result in beneficial ownership of such Shares by a Restricted Person.

9.3 If it appears that an Investor is a Restricted Person, the Board is entitled to, in its absolute discretion:

- 9.3.1 Decline to accept the vote of the Restricted Person at the General Meeting and disregard its vote on any matter requiring the Compartment's Consent or the Company's Consent by compulsorily converting the Shares held by the Restricted Persons in non-voting shares; and/or
- 9.3.2 Instruct the Restricted Person to sell his/her/its Shares and to demonstrate to the Board that this sale was made within 30 (thirty) calendar days of the sending of the relevant notice, subject each time to the applicable restrictions on transfer as set out in Section 8 of this General Section; and/or
- 9.3.3 Compulsorily redeem all Shares held by the Restricted Person at a price based on the latest available NAV of the Shares at the date on which the Board becomes aware that the relevant Investor is a Restricted Person.

## **10. PREVENTION OF MONEY LAUNDERING AND OF TERRORIST FINANCING**

- 10.1 Measures aimed on the prevention of money laundering and of terrorist financing under Luxembourg Law are under the responsibility of the Company and have been delegated (under its supervision) to the Fund Administrator.
- 10.2 These measures require, amongst others, that the Fund Administrator requests the verification of the identity of any Investor. By way of example, a natural person will be required to provide a copy of his/her passport or identification card duly certified by a competent authority (e.g., embassy, consulate, notary, police officer, financial institution

domiciled in a country imposing equivalent identification requirements or any other competent authority) and a corporate applicant will be required *inter alia* to provide a certified copy of the certificate of incorporation (and any change of name), the Investor's memorandum (if any) and its articles of association (or equivalent), a recent list of its shareholders showing a recent stake in its capital, printed on the letterhead of the Investor duly dated and signed, an authorised signature list, an excerpt of the trade register as well as a certified true copy for any natural person who qualifies as its beneficial owner or legal representative. It should be noted that the above list is not exhaustive and that the Investors may be required to provide further information to the Company or the Fund Administrator to ensure the identification of the final beneficial owner of the Shares. Documents on Investors will be reviewed and safe-kept by the Fund Administrator. Each Investor will be granted access to his/her documents upon request to the Company.

- 10.3 Until satisfactory proof of identity is provided by an Investor or transferee as determined by the Company, it reserves the right to withhold issue or approval of registration of transfers of Shares. Similarly, redemption proceeds will not be paid unless compliance with these requirements has been made in full. In any such event, neither the Company, nor Fund Administrator will be liable for any interest, costs or compensation.
- 10.4 In case of a delay or failure to provide satisfactory proof of identity, the Company or the Fund Administrator may take such action as it thinks fit.
- 10.5 Depending on the circumstances of each application for subscription or registration of a transfer of Shares, a detailed verification of the applicant's identity might not be required where the application is made through a financial institution or intermediary located in a country that is considered by the Company or the Fund Administrator as imposing identification requirements equivalent to those in place in Luxembourg.
- 10.6 A list of documents to be provided by an Investor for the purpose of the prevention of money laundering as provided by Luxembourg Law can be provided by the Company or the Fund Administrator upon request.

## **11. MARKET TIMING AND LATE TRADING**

- 11.1 Investors should note that the Company may reject or cancel any subscription or conversion request of Shares for any reason and in particular in order to comply with CSSF circular 04/146 relating to the protection of UCIs and their investors against Late Trading and Market Timing practices.
- 11.2 For example, excessive trading of shares in response to short-term fluctuations in the market, a trading technique sometimes referred to as Market Timing, has a disruptive effect on portfolio management and increases the relevant Compartment's expenses. Accordingly, the Company may, in the sole discretion of the Board, compulsorily redeem Shares or reject subscription or conversions requests from an Investor that the Board reasonably believes has engaged in Market Timing activity. For these purposes, the Board may consider an Investor's trading history in the relevant Compartment and accounts under common control or ownership.
- 11.3 In addition to the Redemption Fee which may be of application to those requests as set forth in the Special Section of the relevant Compartment, the Company may impose a penalty of maximum 5% of the NAV of the Shares subscribed or converted in order to prevent Market Timing activities. The penalty shall be credited to the relevant Compartment or Class. The Company or any Director will not be held liable for any loss resulting from rejected orders or mandatory redemption.

11.4 The Board will ensure that the relevant cut-off time for requests for subscription, redemption or conversion requests are complied with and will therefore take all adequate measures to prevent practices known as Late Trading. Notwithstanding this, the Board may, on an exceptional basis, resolve to accept a subscription, redemption or conversion request received after the applicable cut-off time if the Board can reasonably consider that there is no risk of Late Trading or Market Timing, e.g. but not limited to such cases where it may be established that the Investor has issued the order before the determined cut off time.

## **12. CALCULATION OF THE NAV**

### **General Information**

12.1 The Company, each Compartment and each Class in a Compartment have a NAV determined in accordance with Luxembourg Law, subject to any adjustment required to ensure that Shareholders are treated fairly and in accordance with the Articles.

12.2 The Company entrusted the Fund Administrator with the calculation of the NAV.

### **Calculation of the NAV**

12.3 The NAV of the Company is calculated in its Reference Currency which is EUR.

12.4 The NAV of each Compartment or Class is calculated in the Reference Currency of that Compartment or Class in good faith in Luxembourg as at each Valuation Date as stipulated in the relevant Special Section.

12.5 The NAV per Compartment and Class is calculated as follows: each Class participates in the Compartment according to the portfolio and distribution entitlements attributable to such Class. The value of the total portfolio and distribution entitlements attributed to a Class of a relevant Compartment on a given Valuation Date adjusted with the liabilities relating to that Class on that Valuation Date represents the total NAV attributable to that Class of the relevant Compartment as of the relevant Valuation Date. The assets of each Class will be commonly invested within a Compartment but subject to different fee structures, distribution, marketing targets, currency or other specific features as it is stipulated in the relevant Special Section. A separate NAV per Share, which may differ as consequence of these variable factors, will be calculated for each Class as follows: the NAV of that Class of that Compartment on that Valuation Date divided by the total number of Shares of that Class of that Compartment then outstanding on that Valuation Date.

12.6 The NAV of each Compartment shall be determined by calculating the aggregate of:

12.6.1 The value of all assets of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles; less

12.6.2 All the liabilities of the Company which are allocated to the relevant Compartment in accordance with the provisions of the Articles, and all fees attributable to the relevant Compartment, which fees have accrued but are unpaid on the relevant Valuation Date.

12.7 The total net assets of the Company will result from the difference between the gross assets (including the market value of Investments owned by the Company and or any of its intermediary vehicles) and the liabilities of the Company based on a consolidated view, provided that the set up costs for the Company and the launch of any Compartment or Class

may be amortised over a maximum period of five (5) years rather than expensed in full when they are incurred.

- 12.8 The value of Investments will be determined as follows:
- 12.8.1 Any transferable security and instrument (including any financial derivative instrument) negotiated or listed on a Regulated Market will be valued on the basis of the last known price, unless this price is not representative, in which case the value of such a security or instrument will be determined on the basis of its fair value;
  - 12.8.2 Units, shares or interests of any UCI are based on the last available value provided by the Alternative Investment Fund Manager or any other reliable party involved with that UCI;
  - 12.8.3 The liquidating value of any financial derivative instruments which are not traded on a Regulated Market will mean their net liquidating value determined, pursuant to the policies established for the relevant Compartment, on a basis consistently applied for each different variety of financial derivative instruments;
  - 12.8.4 Unlisted securities or instruments not traded on a Regulated Market as well as listed securities or instruments listed on a market other than a Regulated Market, or securities or instruments whose quoted price is, in the opinion of the Alternative Investment Fund Manager (or its agent), not representative of actual market value, will be valued at their last price known in Luxembourg or, in the absence of such price, on the basis of their fair value, as determined with prudence and in good faith by the Alternative Investment Fund Manager (or its agent), provided that private equity investments will be estimated with due care and in good faith by taking into account International Private Equity and Venture Capital Valuation Guidelines;
  - 12.8.5 The value of any cash on hand or on deposit, bills and demand notes and accounts, receivable, prepaid expenses, cash dividends and interest declared or accrued as aforesaid, and not yet received shall be deemed to be the full amount thereof, unless it is unlikely to be received in which case the value thereof shall be arrived at after making such discount as the Alternative Investment Fund Manager (or its agent) may consider appropriate in such case to reflect the true value thereof.
- 12.9 Other method of valuation may be used in accordance with Luxembourg Law if the valuation obtained by such method better reflects the fair value of any asset or liability of the Company. This method will then be applied in a consistent way. The Alternative Investment Fund Manager can rely on deviations as retained by the Alternative Investment Fund Manager for the purpose of the NAV calculation.
- 12.10 All assets denominated in a currency other than the Reference Currency of the respective Class shall be converted at the mid-market conversion rate between the reference currency and the currency of denomination as at the Valuation Date.

### **General rules**

- 12.11 All valuation regulations and determinations shall be interpreted and made under Luxembourg Law;
- 12.12 The NAV as of any Valuation Date are available to Shareholders at the registered office of the Company as soon as it is finalised. The Fund Administrator under the supervision of the Company will use its best efforts to calculate and to finalise the NAV within a reasonable period of time following the relevant Valuation Date;
- 12.13 For the avoidance of doubt, the provisions of this Section 12 are rules for determining the NAV and are not intended to affect the treatment for accounting or legal purposes of the assets and liabilities of the Company or any Shares;
- 12.14 Series of Shares, if any, will be treated under this Section 12 in the same manner as Classes.

### **13. VALUATION OF INVESTMENTS**

- 13.1 The Alternative Investment Fund Manager is responsible for the determination of the fair value of the Investments in accordance with this Memorandum and the valuation policy adopted by the Alternative Investment Fund Manager.
- 13.2 When appraising the fair value of an Investment which becomes illiquid or hard to value, the Alternative Investment Fund Manager will:
- 13.2.1 Liaise with the Company to assess the valuation;
  - 13.2.2 As, the case may be, appoint an independent valuer and decide on retaining, rejecting or adjusting the value provided by the independent valuer; or
  - 13.2.3 Declare the Investment a Side Pocket Investment, transfer the Investment to the Side Pocket Class and convert au prorata Shares into Side Pocket Shares in accordance with Sections 7.9 et seq.
- 13.3 The independent valuer will not be affiliated to the Depositary and must fulfil the conditions of article 17(5) of the 2013 Act.
- 13.4 The name of each independent valuer which valuations have been used will be disclosed in the Annual Report. The Shareholders may furthermore inform themselves at the registered office of the Company or the Alternative Investment Fund Manager of the names of the independent valuers.
- 13.5 The Alternative Investment Fund Manager is entitled to rely, without further inquiry, on the valuations provided by the Company, the Alternative Investment Fund Manager or by the independent valuer and, for the avoidance of doubt, the Alternative Investment Fund Manager will be under no obligation to value the Investments when calculating the NAV.

### **14. TEMPORARY SUSPENSION OF CALCULATION OF THE NAV AND/OR OF SUBSCRIPTION, REDEMPTION AND CONVERSION**

- 14.1 The Company may at any time instruct the Fund Administrator to suspend the determination of the NAV of the Company, of a Compartment, of a Class or series and consequently to suspend the issue, redemption or conversion of the relevant Shares:
- 14.1.1 When one or more Regulated Markets or markets other than a Regulated Market, which provide the basis for valuing a substantial portion of the Investments, or when one or more foreign exchange markets in the currency in which a



substantial portion of the Investments are denominated, are closed otherwise than for ordinary holidays or if dealings therein are restricted or suspended;

- 14.1.2 When, as a result of political, economic, military or monetary events or any circumstances outside the responsibility and the control of the Company, disposal of the Investments is not reasonably or normally practicable without being seriously detrimental to the interests of the Shareholders;
  - 14.1.3 In the case of a breakdown in the normal means of communication used for the valuation of any Investment or if, for any reason beyond the responsibility of the Company, the value of any Investment may not be determined as rapidly and accurately as required;
  - 14.1.4 If, as a result of exchange restrictions or other restrictions affecting the transfer of funds, transactions on behalf of the Company are rendered impracticable or if purchases and sales of the Company's assets cannot be effected at normal rates of exchange;
  - 14.1.5 When for any other reason, the prices of any Investments within a Compartment cannot be accurately determined;
  - 14.1.6 upon the publication of a notice convening a General Meeting for the purpose of winding-up the Company or any Compartment(s);
  - 14.1.7 When the suspension is required by law or legal process; and/or
  - 14.1.8 When for any reason the Company determines that such suspension is in the best interests of Shareholders.
- 14.2 Any such suspension may be notified by the Fund Administrator in such manner as it may deem appropriate to the persons likely to be affected thereby. The Fund Administrator shall notify Shareholders requesting redemption or conversion of their Shares or subscription of new Shares, of such suspension.
- 14.3 Such suspension as to any Compartment, Class or series may have no effect on the calculation of the NAV per Share, the issue, redemption and conversion of Shares of any other Compartment, Class or series.

## **15. GENERAL MEETING**

- 15.1 The General Meeting must be held within six (6) months after the end of the Accounting Year. Shareholders will be informed on the day, time and place of the annual General Meeting by registered mail or e-mail as determined in the applicable Subscription Agreement.
- 15.2 In addition to the annual General Meeting, other General Meetings may be held at such place and time as may be specified in the respective convening notices of that General Meeting.
- 15.3 Notices for each General Meeting will be sent to the Shareholders by registered mail or e-mail as determined in the applicable Subscription Agreement at least eight (8) calendar days prior to the relevant General Meeting at their addresses set out in the Register. Such notices will include the agenda and specify the time and place of the meeting and the conditions of admission and will refer to the requirements of Luxembourg Law with regard to the necessary quorum and majorities required for the relevant General Meeting. If all

Shareholders meet and declare having had notice of the General Meeting or waiving the notice, the General Meeting may be validly held despite the accomplishment of the afore set formalities. The requirements as to attendance, quorum and majorities at all General Meetings are those set in the 1915 Act and the Articles.

- 15.4 Except as otherwise required by the 1915 Act or as otherwise provided in the Articles, resolutions at a duly convened General Meeting will be passed by a simple majority of those present or represented.

**16. ACCOUNTING YEAR – ANNUAL REPORT – DOCUMENTS AVAILABLE FOR INSPECTION TO INVESTORS**

**Accounting Year**

- 16.1 The Accounting Year will begin on 1 July and terminate on 30 June of each year.

**Annual Report**

- 16.2 The Company shall establish an Annual Report that includes, inter alia, audited financial statements, a description of the assets of the Company, a report from the Board and the Auditor.

- 16.3 The Annual Report will be made available to all Shareholders and will be submitted to the annual General Meeting for approval within six (6) months after the end of each Accounting Year.

- 16.4 At the latest fifteen (15) days prior to the annual General Meeting, the balance sheet, the profit and loss account, the reports of the Board and of the Auditor and such other documents as may be required by law shall be deposited at the registered office of the Company where they will be available for inspection by the Shareholders during regular business hours.

**Documents available for Investors**

- 16.5 Documents available for inspection by Investors free of charge, during usual business hours at the registered office of the Company in Luxembourg:

16.5.1 The Articles and the latest available Annual Report.

16.5.2 The following agreements may also be examined at the Company's or the Alternative Investment Fund Manager's registered office:

- (a) Depositary Agreement;
- (b) Domiciliary Agency Agreement
- (c) AIFM Agreement;
- (d) Administrative and Registrar and Transfer Agencies Agreement;
- (e) Risk management process adopted by the Alternative Investment Fund Manager for the account of the relevant Compartment; and
- (f) Remuneration policy adopted by the Alternative Investment Fund Manager.

## **17. DISSOLUTION/LIQUIDATION**

### **Dissolution and liquidation of the Company**

- 17.1 The Company may at any time be dissolved by a resolution taken by the General Meeting subject to the quorum and majority requirements set out in the 1915 Act unless otherwise determined in the Articles.
- 17.2 In the event of a voluntary liquidation, the Company shall, upon its dissolution, be deemed to continue to exist for the purposes of the liquidation. The operations of the Company shall be conducted by one or several liquidators, who shall be appointed by a General Meeting which also determines their powers and compensation.
- 17.3 Should the Company be voluntarily liquidated, then its liquidation will be carried out in accordance with the provisions of the 2016 Act and the 1915 Act.
- 17.4 If the Company were to be compulsorily liquidated, the provision of the 2016 Act will be exclusively applicable.
- 17.5 The issue of new Shares by the Company shall cease on the date of publication of the notice of the General Meeting, to which the dissolution and liquidation of the Company shall be proposed. The proceeds of the liquidation of the Company, net of all liquidation expenses, shall be distributed by the liquidators among the holders of Shares in each Class in accordance with their respective rights. The amounts not claimed by Shareholders at the end of the liquidation process shall be deposited, in accordance with Luxembourg Law, with the *Caisse de Consignation* in Luxembourg until the statutory limitation period has lapsed.

### **Termination of a Compartment or Class**

- 17.6 In the event that, for any reason:
- 17.6.1 The value of the total net assets in any Compartment or the value of the net assets of any Class within a Compartment has decreased to, or has not reached, an amount determined by the Board or its delegate to be the minimum level for such Compartment, or such Class of Shares, to be operated in an economically efficient manner; or
- 17.6.2 In case of a substantial modification in the political, economic or monetary situation; or
- 17.6.3 As a matter of economic rationalisation; or
- 17.6.4 A situation arises, where the Board may not, despite all reasonable efforts, manage the assets of a Compartment in compliance with the investment restriction set out in Section 3.5 of this General Section;

the Board may decide to offer to the Shareholders of such Compartment the conversion of their Shares into Shares of another Compartment under terms determined by the Board or to redeem all the Shares at the NAV per Share (taking into account actual realisation prices of Investments and realisation expenses) calculated on the Valuation Date at which such decision shall take effect. The Board shall serve a notice to the relevant Shareholders prior to the effective date for the compulsory redemption, which will indicate the reasons for, and the procedure of, the redemption operations.

- 17.7 Notwithstanding the powers conferred to the Board under Section 17.6, the General Meeting of any Compartment or Class will, in any other circumstances, have the power, upon proposal from the Board, to redeem all the Shares of the relevant Compartment or Class and refund to the Shareholders the NAV of their Shares (taking into account actual realisation prices of Investments and realisation expenses) calculated on the Valuation Date, at which such decision will take effect. There will be no quorum requirements for such General Meeting, which will decide by resolution taken by simple majority of those present or represented and voting at such General Meeting. Such resolution will however be subject to the Board's consent.
- 17.8 Any request for subscription shall be suspended as from the moment of the announcement of the termination, the merger or the transfer of the relevant Compartment.
- 17.9 Assets which may not be distributed upon the implementation of the redemption will be deposited with the *Caisse de Consignation* in Luxembourg on behalf of the persons entitled thereto within the applicable time period.
- 17.10 All redeemed Shares will be cancelled.

#### **Amalgamation, division or transfer of Compartments or Classes**

- 17.11 Under the same circumstances as provided under Section 17.6 of this General Section, the Board may decide to allocate the assets of any Compartment to those of another existing Compartment within the Company or to another undertaking for collective investment organised under the provisions the 2016 Act, the act of 13 February 2007 on specialised investment funds, as amended or of Part II of the 2010 Act or to another compartment within such other undertaking for collective investment (the **New Compartment**) and to re-designate the Shares of the relevant Compartment as Shares of another Compartment (following a split or consolidation, if necessary, and the payment of the amount corresponding to any fractional entitlement to the relevant Shareholders). Such decision will be notified in the same manner as described under Section 17.6 of this General Section one month before its effectiveness (and, in addition, the publication will contain information in relation to the New Compartment), in order to enable Shareholders to request redemption of their Shares, free of redemption fee, if any, as stated in this Confidential Offering Memorandum, during such period.
- 17.12 Notwithstanding the powers conferred to the Board by Section 17.11, a contribution of assets and liabilities attributable to any Compartment to another Compartment within the Company may, in any other circumstances, be decided upon by a General Meeting of the Compartment or Class concerned for which there will be no quorum requirements and which will decide upon such an amalgamation by resolution taken by simple majority of those present or represented and voting at such General Meeting. Such resolution will however be subject to the Board's consent.
- 17.13 Furthermore, in other circumstances than those described in Section 17.6 of this General Section, a contribution of the assets and of the liabilities attributable to any Compartment to another undertaking for collective investment referred to in Section 17.11 of this General Section or to another compartment within such other undertaking for collective investment will require a resolution of the Shareholders of the Class or Compartment concerned taken with 50% quorum requirement of the Shares in issue and adopted at a 2/3 majority of the Shares present or represented and voting, except when such an amalgamation is to be implemented with a Luxembourg undertaking for collective investment of the contractual type (*fonds commun de placement*) or a foreign based undertaking for collective investment, in which case resolutions will be binding only on such Shareholders who have voted in

favour of such amalgamation. Any General Meeting resolution taken in accordance with this Section 17.13 is subject to the Board's consent.

## **18. DISTRIBUTION**

- 18.1 The Board is entitled to determine the payment of dividends in accordance with the 2016 Act and as determined for the relevant Compartment in its Special Section.
- 18.2 Payments will be made in the Reference Currency of the relevant Compartment and/or Class.
- 18.3 Dividends remaining unclaimed for five (5) years after their declaration will be forfeited and revert to the relevant Compartment.
- 18.4 The Board shall not be obliged to cause any Compartment to make any distribution:
- 18.4.1 If there is not enough cash available for the distribution;
  - 18.4.2 If it would render the Company or the relevant Compartment insolvent;
  - 18.4.3 If, in the reasonable opinion of the Board, would or might leave the Company with a subscribed share capital (increased by the share premium, if any) of less than EUR 1,250,000 (or the equivalent amount in any other currency);
  - 18.4.4 If, in the reasonable opinion of the Board, insufficient funds to meet any future contemplated obligations, expenses, liabilities or contingencies, including obligations to the Company, the Indemnified Persons or an Investment.
- 18.5 Distributions shall be made only to Shareholders who are recorded in the Register as at the date a distribution is made and no sums shall be treated as accruing due prior to actual payment. Neither the Company, nor the Alternative Investment Fund Manager or any other agent of the Company or of the Alternative Investment Fund Manager shall incur any liability for distributions made in good faith to any Shareholder at the last address provided by it prior to the registration of any Transfer of all or any of its Shares in the Company.
- 18.6 The Board may at its discretion resolve to distribute assets in kind. To the extent practicable, however, these assets will not be distributed (other than in connection with liquidating distributions) unless they are readily marketable. Assets distributed in kind will be valued at the time of the distribution in good faith and by taking account factors deemed relevant for the fair treatment of Shareholders. When distributions are made in kind, they will be treated as cash distributions for purposes of applying the distribution provisions.

## **19. TAXATION**

### **General**

- 19.1 The following is an overview of certain tax consequences of purchasing, owning and disposing of the Shares. It does not purport to be a comprehensive description of all of the tax considerations that might be relevant to an investment decision. It is included herein solely for preliminary information purposes. It is not intended to be, nor should it be construed to be, legal or tax advice. It is a description of certain tax consequences for individual taxpayers with respect to the Shares of the Company and may not include tax considerations that arise from rules of general application or that are generally assumed to be known to Shareholders. This overview is based on the laws in force on the date of this Memorandum and is subject to any change in law that may take effect after such date.

Investors should consult their professional advisors with respect to particular circumstances, the effects of state, local or foreign laws to which they may be subject and as to their tax position.

- 19.2 To the extent required by the context, the defined terms used in the following subsections of this Section 19 may have a different meaning from the meaning ascribed to them under “Definitions”.

#### **Taxation in Luxembourg**

- 19.3 Under current law and practice, the Company is exempt from Luxembourg corporation taxes and net wealth tax. However, interest, dividend and capital gains received by the Company may be subject to irrecoverable withholding taxes or other taxes in the country where such interest, dividends or gains originate.
- 19.4 The Company is liable to an annual subscription tax (*taxe d'abonnement*) which is presently set at 0.01% of the value of the Company's net assets. This subscription tax is payable quarterly based on the Company's net asset value as calculated at the end of each quarter.
- 19.5 No ad valorem duty or tax is payable in Luxembourg in connection with the issue of Shares by the Company. A fixed registration duty of EUR 75 will be due by the Company upon its incorporation and each amendment of its articles of association.

#### **FATCA**

- 19.6 FATCA was enacted on 18 March 2010 as part of the Hiring Incentive to Restore Employment Act. It includes provisions under which a Foreign Financial Institution (FFI) may be required to report directly to the Internal Revenue Service (IRS) certain information about shares and Interests held by U.S. tax payers or other foreign entities subject to FATCA and to collect additional identification information for this purpose. FFI that do not enter into an agreement with the IRS and comply with the regulations relating to FATCA could be subject to 30% withholding tax in relation to certain US source income and gains. The regulations relating to FATCA become effective in phases between 1 July 2014 and 2017.
- 19.7 On 28 March 2014, Luxembourg signed a Model 1 Intergovernmental Agreement (the **IGA**) with the U.S. and a memorandum of understanding in respect thereof, which was ratified in Luxembourg by the act of 24 July 2015 (the **Luxembourg FATCA Act**). The Company is obliged to comply with the provisions of FATCA under the terms of the Luxembourg FATCA Act. The Company is required to collect information aiming to identify its direct and indirect Investors that are “Specified US Persons” for FATCA purposes (“reportable accounts”). Any such information on reportable accounts provided to the Company will be shared with the Luxembourg tax authorities that will exchange that information on an automatic basis with the IRS.
- 19.8 The Company however generally intends to comply with the provisions of the Luxembourg FATCA Act to be deemed compliant with FATCA and should thus not be subject to the 30% withholding tax (the **FATCA Withholding**) with respect to its share of any such payments attributable to actual and deemed U.S. investments of the Company.
- 19.9 To ensure compliance with the regulations relating to FATCA and the provisions of the Luxembourg FATCA Act, the Company may:
- 19.9.1 Require any Investor to furnish all information and documentary evidence to ascertain the Investor's FATCA status;

- 19.9.2 Report information concerning a Shareholder to the Luxembourg tax authorities if such account is deemed a reportable account (the Investors waive insofar, if applicable, any conflicting rules on banking secrecy data-protection) and report payments to certain entities; and
  - 19.9.3 Provide information to third parties to allow these to make an applicable FATCA Withholding;
  - 19.9.4 In accordance with the regulations relating to FATCA and the Luxembourg FATCA Act.
- 19.10 The aforesaid shall apply in relation to other withholding taxes accordingly. In addition, the Company may also require any Investor to pay amounts to the Company in order to comply with its FATCA Withholding and other withholding tax obligations. Finally, amendments may be made to this Memorandum to address the implementation of tax regulations including regulations relating to FATCA and the Luxembourg FATCA Act, and compliance with such tax regulations may increase the Company's operating expenses.
- 19.11 Even though the Company generally intends to comply with any obligations imposed on it under the regulations relating to FATCA to avoid the imposition of FATCA Withholding, no assurance can be given that the Company will be able to satisfy these obligations. If the Company becomes subject to FATCA Withholding as a result of a non-compliance with these regulations, the value of Shares may be materially affected. If an amount in respect of FATCA were to be deducted or withheld from distributions, repayment of capital or other payments on or with respect to the Shares, neither the Company nor any other party would have any obligation to pay additional amounts or otherwise indemnify Shareholders for any such withholding or deduction by the Company or any other party. As a result, if FATCA Withholding is imposed on these payments, Shareholders may receive lower amounts than expected.

### **OECD Common Reporting Standard**

- 19.12 Drawing extensively on the intergovernmental approach to implementing FATCA, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (the **CRS**) to address the issue of offshore tax evasion on a global basis. Aimed at maximizing efficiency and reducing cost for financial institutions, the CRS provides a common standard for due diligence, reporting and exchange of financial account information. Pursuant to the CRS, participating jurisdictions will obtain from reporting financial institutions, and automatically exchange with exchange partners on an annual basis, financial information with respect to all reportable accounts identified by financial institutions on the basis of common due diligence and reporting procedures.

The first information exchanges began in 2017. Luxembourg has committed to implement the CRS. As a result, the Company will be required to comply with the CRS due diligence and reporting requirements, as adopted by Luxembourg. Investors may be required to provide additional information to the General Partner to enable the Company to satisfy its obligations under the CRS. Failure to provide requested information may subject an Investor to liability for any resulting penalties or other charges and/or mandatory termination of its interest in the Company.

### **Future changes in applicable law**

- 19.13 The foregoing description of tax consequences of an investment in and the operations of, the Company is based on laws and regulations which are subject to change through legislative,

judicial or administrative action. Other legislation could be enacted that would subject the Company to income taxes or subject Investors to increased income taxes.

- 19.14 The tax and other matters described in this memorandum do not constitute, and should not be considered as, legal or tax advice to investors who should consult their own counsel regarding tax laws and regulations of any jurisdiction which may be applicable to them. To ensure compliance with requirements imposed by the us internal revenue service, any us federal income tax advice contained in this communication was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding us federal tax-related penalties under the us internal revenue code or (ii) promoting, marketing or recommending to another party any us federal income tax-related matters addressed herein.

## **20. INDEMNITY**

- 20.1 The Directors, the Alternative Investment Fund Manager and any member of the Investment Committee, the Depositary, The Fund Administrator, the Domiciliary Agentany adviser and, where applicable, their Affiliates, officers, directors, employees or agents of each of the foregoing (each referred to as an **Indemnified Person**) are entitled to be indemnified, out of the relevant Compartment's assets (and, for the avoidance of doubt, which may be from the assets of all Compartments if the relevant matter applies to the Company as a whole or all Compartments), against all liabilities, costs or expenses (including reasonable legal fees), damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, that may be incurred by such Indemnified Person, or in which such Indemnified Person may become involved or with which such Indemnified Person may become threatened, in connection with, or relating to, or arising or resulting from in respect of or in connection with any matter or other circumstance relating to or resulting from the exercise of its powers or from the provision of services to or in respect of the Company or under or pursuant to any management agreement or other agreement relating to the Company or which otherwise arise in relation to or in connection with the operation, business or activities of the Company, provided that no Indemnified Person shall be entitled to such indemnification for any action or omission resulting from any behaviour by it which qualifies as fraud, wilful misconduct, reckless disregard or gross negligence.
- 20.2 The Company may, wherever deemed appropriate, provide professional, D&O or other adequate indemnity insurance coverage to one or more Indemnified Persons.

## **21. ANNOUNCEMENTS AND CONFIDENTIALITY**

- 21.1 All public disclosure or announcement of the existence or the subject matter of this Memorandum shall be subject to the approval of the Board or its delegate. This shall not affect any announcement or disclosure by an Investor under Section 21.2 of the General Section but the Investor required to make an announcement or disclosure shall consult with the Board or its delegate insofar as is reasonably practicable before complying with such an obligation.
- 21.2 Each Investor shall and shall procure that its directors, managers, employees, officers, partners, Investors, agents, consultants and advisers and any Affiliate (and their directors, employees, officers, partners, Investors, agents, consultants and advisers) keep confidential and shall not disclose any information provided to it by or on behalf of the Company or otherwise obtained by or in connection with this Memorandum or which may come to its knowledge concerning the affairs of the Company or any investment made or proposed by the Company, save to the extent that:



- 21.2.1 Disclosure is required by any applicable law or any court of law or any relevant regulator or tax authority;
- 21.2.2 Disclosure is necessary in order for an Investor to enforce its rights under the terms of this Memorandum;
- 21.2.3 Disclosure is made by the initiators to its own shareholders and to the regulatory, supervisory or other authority to which it is subject;
- 21.2.4 Relevant information is already in the public domain prior to disclosure (other than as a result of a breach of any obligation by any Investor);
- 21.2.5 Disclosure is made to an Investor's bona fide legal, tax or accountancy advisers or auditors, provided that such disclosure is made on a confidential basis and such advisers or auditors undertake an equivalent duty of confidentiality to that set out in this Section; or
- 21.2.6 Disclosure is required in good faith and only where reasonably necessary to any Affiliate of that Investor, provided that such disclosure is made on a confidential basis and such Affiliate undertakes an equivalent duty of confidentiality to that set out in this Section.

## **22. PAYMENTS**

Unless otherwise stated for a relevant Compartment in its Special Section or in the Subscription Agreement, all payments to be made pursuant to terms set out in this Memorandum shall be made in the reference currency of the Sub-Fund (or in the reference currency of the related Class of Shares, if any) to Investors or the Company in immediately available funds to the accounts which will be communicated in writing by each of the Investors to the Company or by the Company to the Investors.

## **23. EXPENSES**

- 23.1 The Company shall pay out of the assets of the relevant Compartment all expenses incurred by it (the **Expenses**), which include:
  - 23.1.1 Management Fee and other fees which are set forth in the relevant Special Section and reasonable out-of-pocket expenses and disbursements of the Alternative Investment Fund Manager;
  - 23.1.2 Fees and reasonable out-of-pocket expenses paid to any Service Provider appointed either by the Company or by the Alternative Investment Fund Manager and which are directly charged to the Company which for instance includes fees paid to the Depositary, the Domiciliary Agent or the Fund Administrator;
  - 23.1.3 Any fees, costs and expenses incurred in connection with making any filings with any government body or regulatory authority as well as statutory or regulatory fees, if any, levied against or in respect of the Company together with the costs incurred in preparing any submission required by any tax, statutory or regulatory authority;
  - 23.1.4 Remuneration, reasonable out-of-pocket expenses and insurance coverage of the Directors and the members of the Investment Committee, if any, including reasonable travelling costs in connection with meetings of the Directors and the

members of the Investment Committee, if any, whereby the amount of remuneration amongst Directors and members of the Investment Committee may be different and may, in specific cases, amount up to a sum of EUR 150,000;

- 23.1.5 Any costs and expenses relating to investor relationship including the drafting, printing and mailing of reports and information to Investors and Shareholders;
- 23.1.6 Any fees, costs and expenses relating to valuations of Investments including the fees paid to independent valuers;
- 23.1.7 Any expenses incurred in connection with legal proceedings involving the Company or any other person in relation to its function for the Company;
- 23.1.8 Fees, costs and expenses required to be paid in connection with any credit or overdraft facility or other type of borrowing arrangement, including the legal fees, costs and expenses of the lawyers for the lender(s), the fees, costs and expenses of the Company's counsel, lender's assumption or transfer fees and required reserves;
- 23.1.9 Any other third-party costs and expenses disbursed in connection with the day-to-day management of each Compartment and the operations of each Compartment and its Investments;
- 23.1.10 Any expenses incurred in connection with obtaining legal, tax and accounting advice and the advice of other experts and consultants;
- 23.1.11 Insurance premia, litigation, arbitration and indemnification expenses (in accordance with Section 20 of the General Section), including any claims and expenses and governmental fees and charges associated therewith;
- 23.1.12 Audit expenses;
- 23.1.13 Bank charges and interest;
- 23.1.14 Taxes (including the subscription tax) and other governmental charges;
- 23.1.15 Fees, costs and expenses incurred in connection with hedging any interest rate, foreign exchange or other risks associated with the business and affairs of the Company, including any Investments;
- 23.1.16 Winding-up costs;
- 23.1.17 Legal or other professional fees, costs and expenses for the negotiation, structuring, financing and documentation in relation to the acquisition, ownership, financing, refinancing, hedging and realisation of any Investment, (whether or not completed or realised), any investment-related fees and other fees (including any out-of-pocket costs or expenses incurred by any third-party advisers or accountants), unless reimbursed by another person;
- 23.1.18 All third-party costs and expenses incurred in connection with the performance of all due diligence investigations in relation to the acquisition, ownership or realisation of any Investment (whether or not completed or realised); and
- 23.1.19 Transactional fees and expenses in connection with Investments and divestments including, fees and expenses of brokers, traders or other intermediaries

(irrespective if those fees or expenses have been incurred in connection with a consummated or an unconsummated transaction).

- 23.2 Expenses specific to a Compartment or Class will be borne by that Compartment or Class. Charges that are not specifically attributable to a particular Compartment or Class may be allocated among the relevant Compartments or Classes based on their respective net assets or any other reasonable basis given the nature of the charges.

#### **Set-Up Costs**

- 23.3 Any costs and expenses incurred by the initiators, the Company or any Affiliate of any of the foregoing, in connection with the establishment, offering and sale of Shares including any costs and expenses incurred in connection with the preparation of the Memorandum or supplement thereto (including fees, costs and expenses of legal and tax advisers), any subscription materials and any other agreements or documents relating to the establishment and offering of Shares will be amortised over a maximum period of five (5) years. The Board estimates the Set-up Costs up to EUR 75,000.
- 23.4 Expenses incurred in connection with the creation of any additional Compartment will be borne by the relevant Compartment and will be written off over a maximum period of five (5) years. Hence, the additional Compartments will not bear a pro rata proportion of the costs and expenses incurred in connection with the creation of the Company and the initial issue of Shares which have already been written off or amortised at the time of the creation of the new Compartments.

## **24. RISK FACTORS**

### **General risk factors**

- 24.1 An investment in a Compartment involves a significant degree of risk. Investment is only suitable for those persons which/who are able to bear the economic risk of the investment, understand the high degree of risk involved, believe that the investment is suitable based upon their investment objectives and financial needs, and have no need for liquidity of investment. There can be no assurance that objectives of a relevant Compartment will be achieved or that there will be any return of capital.
- 24.2 Before making an investment decision in any Compartment, Investors should carefully consider all information set out in this Memorandum (including the relevant Special Section) as well as their own personal circumstances. The risk factors, alone or collectively, may reduce the return on the Shares of any Compartment and could result in the loss of all or a proportion of an Investor's investment in any Compartment. The price of the Shares can go down as well as up and their value is not guaranteed. Shareholders may not receive, at redemption or liquidation, the amount that they originally invested or any amount at all.
- 24.3 The risks may include or relate to equity markets, foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility and political risks. The risk factors set out in the Memorandum are not exhaustive. There may be other risks that an Investor should consider that are relevant to its own particular circumstances or generally.
- 24.4 An investment in any Compartment is only suitable for Investors which/who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of that investment and which/who have sufficient resources to be able to bear any losses that may result from the investment.

- 24.5 Before making any investment decision, an Investor should consult its own stockbroker, bank manager, lawyer, solicitor, accountant or financial adviser and carefully review and consider the investment decision in the light of the foregoing and the Investor's personal circumstances.

### **Structural risk factors**

#### *Key persons*

- 24.6 The success of the Company will largely depend on the experience, relationships and expertise of the key persons – in particular, the Directors and the directors, employees and agents of the Alternative Investment Fund Manager and/or any member of an Investment Committee – which have experience in the respective area of investment. The performance of the Company may be negatively affected if any of the key persons would for any reason cease to be involved.
- 24.7 Key persons might also be involved in other businesses, including similar investments as the one undertaken for the account of a relevant Compartment, and not be able to devote all of their time to the Company. Such involvement may additionally be source for potential conflicts of interest.

#### *Restrictions on Transfer*

- 24.8 Shares are subject to restrictions on Transfer.

#### *Distributions*

- 24.9 There can be no assurance that the operations of any Compartment will be profitable, that the Compartment will be able to avoid losses or that cash from its operations will be available for distribution to the Shareholders. A Compartment does in general have no other source of funds from which to pay distributions to the Shareholders than income and gains received from Investments.

#### *Asymmetrical allocation of performance*

- 24.10 Certain Compartments may provide that the Alternative Investment Fund Manager or any other person including members of an Investment Committee may be entitled to receive incentive compensation including carried interest, performance fee or similar scheme where the performance will be asymmetrical allocated between Investors and the Alternative Investment Fund Manager or the relevant person. The fact that these incentive compensations are based on the performance of the relevant Compartment may create an incentive for the beneficiary to cause the Compartment to make Investments that are riskier than would be the case in the absence of performance-based compensation.

#### *Lack of operating history*

- 24.11 The Company is a relatively newly formed entity, with no significant operating history upon which to evaluate the Company's likely performance.
- 24.12 Each Compartment has recently been created and has therefore no significant operating history.

*Investments through jointly-owned intermediary vehicles*

- 24.13 Each Compartment may co-invest with one or more Compartments or any other third-party investors in certain Investments through jointly owned intermediary vehicles (each a **Co-investor** and collectively the **Co-investors**). Such investments may involve additional risks to those inherent in the underlying Investments including possibility that a Co-investor might at any time have economic or business interests or goals which are inconsistent with those of the other Co-investors, or be in a position to take action contrary to the other Co-investors' intended actions. In addition, any default by one Co-investor could have a deleterious effect on the other Co-investors in the jointly owned intermediary vehicle, their assets and the interest of their shareholders.

**Investment risks**

*General economic and market conditions*

- 24.14 The success of a Compartment's activities may be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws and national and international political circumstances. These factors may affect the level and volatility of security prices and liquidity of the securities held by the relevant Compartment.
- 24.15 Unexpected volatility or liquidity could impair a Compartment's profitability or result in its suffering losses.

*Temporary investments*

- 24.16 Monies paid to a Compartment may be invested in interest-earning, Liquid Assets, on a temporary basis pending investment in Investments. These temporary investments may produce lower returns for Investors than returns earned by the Investments for the same period.

*Foreign currencies and exchange rates*

- 24.17 To the extent that a Compartment directly or indirectly holds assets in local currencies, the Compartment will be exposed to a degree of currency risk which may adversely affect performance. Changes in foreign currency exchange rates may affect the value of securities in the Compartment. In addition, the Compartment will incur costs in connection with conversions between various currencies.

*Leverage*

- 24.18 While the use of leverage may increase the return on the invested capital, it also creates greater potential for loss. There can be no assurance that the respective Compartment, in incurring debt, will be able to meet its loan obligations.
- 24.19 Leverage risk is the risk associated with the borrowing of funds and other investment techniques. Leverage is a speculative technique which may expose the respective Compartment to greater risk and increase its costs. Increases and decreases in the value of the Compartment's portfolio will be magnified when the Compartment uses leverage. For example, leverage may cause greater swings in the Compartment's NAV or cause the Compartment to lose more than it invested. There can be no assurance that the Compartment's leveraging strategy will be successful. If leverage is employed, the NAV and market value of the Shares will be more volatile, and the yield to the Shareholders will

tend to fluctuate with changes in the shorter-term interest rates on the leverage. The Compartments will pay (and the Shareholders will bear) any costs and expenses relating to any leverage.

- 24.20 Certain Compartments may take advantage of third-party borrowing in connection with their Investments to the extent permitted by its investment strategy. Although the use of third-party borrowing may enhance returns and increase the number of Investments that can be made, it involves a high degree of risk and creates greater potential for loss. Use of such borrowing will subject a Compartment to risks normally associated with debt financing, including the risk that the Compartment's cash flow will be insufficient to meet required payments of principal and interest, the risk that indebtedness on the Investments will not be able to be refinanced or the risk that the terms of such refinancing will not be as favourable as the terms of the existing indebtedness. In addition, a Compartment may incur indebtedness that may bear interest at variable rates. Variable rate debt creates higher debt service requirements if market interest rates increase, which would adversely affect the relevant Compartment.

*Use of financial derivative instruments*

- 24.21 The Alternative Investment Fund Manager or its agent may invest for the account of a Compartment in any kind of derivatives. As an example, to match the long-term risk return profile a Compartment may enter into any kind of derivatives, including inflation linked derivatives or interest rate derivatives either directly or indirectly. To protect its present and future assets and liabilities against the fluctuation of currencies, a Compartment may enter into transactions the object of which is the purchase or the sale of forward foreign exchange contracts, the purchase or the sale of call options or put options in respect of currencies, the purchase or the sale of currencies forward or the exchange of currencies on a mutual agreement basis.
- 24.22 A derivative is financial contract whose value depend upon or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes.
- 24.23 The Alternative Investment Fund Manager or its agent may decide not to employ any of these strategies and there is no assurance that any derivatives strategy used by any Compartment will be successful. A Compartment's use of derivatives involves risks different from, or possibly greater than, the risks associated with investing directly in securities and other more traditional investments. The following provides a non-exhaustive description of some risk factors relating to derivatives:

24.23.1 Volatility risk

Derivatives are highly specialised instruments that require investment techniques and risk analyses different from those associated with stocks or bonds. The use of a derivative requires an understanding not only of the underlying instrument but also of the derivative itself, without the benefit of observing the performance of the derivative under all possible market conditions.

24.23.2 Counterparty risk

The use of a derivative involves the risk that a loss may be sustained as a result of the failure of the counterparty to make required payments or otherwise comply with the contract's terms. Additionally, credit default swaps could result in losses

if the relevant Compartment does not correctly evaluate the creditworthiness of the company on which the credit default swap is based.

#### 24.23.3 Liquidity risk

Liquidity risk exists when a particular derivative is difficult to purchase or sell. If a derivative is particularly large or if the relevant market is illiquid (as is the case with many privately negotiated derivatives), it may not be possible to initiate a transaction or liquidate a position at an advantageous time or price.

#### 24.23.4 Leverage risk

Because many derivatives have a leverage component, adverse changes in the value or level of the underlying asset, reference rate or index can result in a loss substantially greater than the amount invested in the derivative itself. Certain derivatives have the potential for unlimited loss, regardless of the size of the initial investment. When a Compartment uses derivatives for leverage, investments in that Compartment will tend to be more volatile, resulting in larger gains or losses in response to market changes.

#### 24.23.5 Lack of availability

Because the markets for certain derivatives are relatively new and still developing, suitable derivatives transactions may not be available in all circumstances for risk management or other purposes. Upon the expiration of a particular contract, the Alternative Investment Fund Manager or its agent may wish to retain for the account of the relevant Compartment the position in the derivative by entering into a similar contract, but may be unable to do so if the counterparty to the original contract is unwilling to enter into the new contract and no other suitable counterparty can be found. There is no assurance that the Compartments will engage in derivative transactions at any time or from time to time. A Compartment's ability to use derivatives may also be limited by certain regulatory and tax considerations.

#### 24.23.6 Market and other risks

Like most other investments, derivatives are subject to the risk that the market value of the instrument will change in a way detrimental to a relevant Compartment's interest. While some strategies involving derivatives may reduce the risk of loss, they may also reduce the opportunity for gain or even result in losses by offsetting favourable price movements in other Investments. The relevant Compartment may also have to buy or to sell a security at a disadvantageous time or price because the Compartment is legally required to maintain offsetting positions or asset coverage in connection with certain derivative transactions.

#### 24.23.7 Other derivative risks

Other risks in using derivatives include the risk of mispricing or improper valuation of derivatives and the inability of derivatives to correlate perfectly with underlying assets, rates and indexes. Many derivatives, in particular privately negotiated derivatives, are complex and often valued subjectively. Improper valuations can result in increased cash payment requirements to counterparties or a loss of value to the relevant Compartment. Also, the value of derivatives may

not correlate perfectly, or at all, with the value of the assets, reference rates or indexes they are designed to closely track. In addition, a Compartment's use of derivatives may cause a Compartment to realise higher amounts of short-term capital gains than if that Compartment had not used such instruments.

*Investments in other UCIs*

- 24.24 Compartments investing in other UCIs will indirectly bear, as an investor in this UCI, its share of managerial fees and operational expenses attributable to the invested UCI including, but not limited to, performance fees and carried interest for the managers of the invested UCI. As a consequence, such a Compartment may bear higher costs with the indirect approach as opposed to a direct approach.
- 24.25 When investing in other UCIs, a relevant Compartment takes an exposure to the risks this UCI is exposed to including management risk, operational risks, valuation risk, liquidity risk and legal or tax risks. In particular, redemption of shares, units or interests of an open-ended UCI facing liquidity issues may be suspended in accordance with its legal documents, applicable laws or regulations or be otherwise not executed which may have an impact of the Compartment which invested in that UCI.
- 24.26 Some invested UCIs may be exposed to risks not comparable to the risk of traditional Investments. UCIs may offer less transparency in relation to their investment policy or strategy and may have strategies which allow investments in a wide selection whilst investing only in a small variety. Neither the Company, nor the Alternative Investment Fund Manager or any of their agents may control an invested UCI or its agents in this regard. It is therefore possible that parameters such as the valuation change and there may only be a limited possibility to review the invested UCI, their managers or agents in the course of a due diligence.
- 24.27 Invested UCIs may be located in jurisdictions which have a higher risk when it comes to transaction or operations or are subject to less regulations and supervision than in the EU. It is possible that a Compartment's ownership of units, shares or interests of a UCI is only registered with a transfer agent or broker whose supervision obligations might not be the same as under Luxembourg Law.

*Investments in emerging and frontier markets*

- 24.28 In certain countries, there is the possibility of expropriation of assets, confiscatory taxation, political or social instability or diplomatic developments which could affect investment in those countries. There may be less publicly available information about certain financial instruments than some Investors would find customary and entities in some countries may not be subject to accounting, auditing and financial reporting standards and requirements comparable to those to which certain investors may be accustomed. Certain financial markets, while generally growing in volume, have for the most part, substantially less volume than more developed markets, and securities of many companies are less liquid and their prices more volatile than securities of comparable companies in more sizeable markets. There are also varying levels of government supervision and regulation of exchanges, financial institutions and issuers in various countries. In addition, the manner in which foreign investors may invest in securities in certain countries, as well as limitations on such investments, may affect the investment operations of the relevant Compartment.
- 24.29 Emerging and frontier country debt will be subject to high risk and will not be required to meet a minimum rating standard and may not be rated for creditworthiness by any internationally recognised credit rating organisation. The issuer or governmental authority



that controls the repayment of an emerging or frontier country's debt may not be able or willing to repay the principal or interest when due in accordance with the terms of such debt. As a result of the foregoing, a government obligor may default on its obligations. If such an event occurs, the Company (or its agent) may have limited legal recourse against the issuer or guarantor. Remedies must, in some cases, be pursued in the courts of the defaulting party itself, and the ability of the holder of foreign government debt securities to obtain recourse may be subject to the political climate in the relevant country. In addition, no assurance can be given that the holders of commercial debt will not contest payments to the holders of other foreign government debt obligations in the event of default under their commercial bank loan agreements.

- 24.30 Settlement systems in emerging and frontier markets may be less well organised than in developed markets. Thus, there may be a risk that settlement may be delayed and that cash or securities of the relevant Compartment may be in jeopardy because of failures or of defects in the systems. In particular, market practice may require that payment will be made prior to receipt of the security which is being purchased or that delivery of a security must be made before payment is received. In such cases, default by a broker or bank through whom the relevant transaction is effected might result in a loss being suffered by a Compartment investing in emerging market securities.
- 24.31 There may also be a danger that, because of uncertainties in the operation of settlement systems in individual markets, competing claims may arise in respect of securities held by or to be transferred to the Sub-funds. Furthermore, compensation schemes may be non-existent or limited or inadequate to meet the Company's claims in any of these events.

#### *Liquidity*

- 24.32 Investments made by the Company may be illiquid and consequently the Company may not be able to sell Investments at prices that reflect the initial assessment of their value.
- 24.33 The nature of Investments may also require a long holding period prior to profitability. Consequently, disposals of Investments may require a lengthy time period or may result in distributions in kind of securities in lieu of or in addition to cash.
- 24.34 In the event the Company makes distributions of securities in kind upon liquidation of the Company, such securities could be illiquid or subject to legal, contractual and other restrictions on transfers; in addition, payment in kind shall be made with the consent of the Investor receiving this in kind and shall be determined on an equitable basis amongst the Investors.
- 24.35 Investments may be converted on Side Pocket Investments. It is uncertain if and when any proceeds may be distributed by the disposal of Side Pocket Investments.

#### *Valuations*

- 24.36 Not publicly-traded or readily marketable Investments as well as Investments in emerging markets or in small and mid-sized capitalised issuers – even when admitted on the trading on a Regulated Market – may be hard to value. The valuation retained by the Company under the supervision of the Alternative Investment Fund Manager and with or without the support of an independent valuer may not always be reliable and access to readily-ascertainable market prices when establishing valuations of those Investments may be limited.

24.37 Its results that the NAV may be biased and that subscription price and redemption price may not reflect the fair value of the Investments.

24.38 No assurance can furthermore be provided that a relevant Investment could ultimately be sold at a price equal or close to the market value ascribed to a relevant Investment.

### **Political risk**

#### *General political risk*

24.39 Investment's returns could suffer as a result of political changes or instability in a country or a region. Instability affecting investment returns could stem from a change in government, legislative bodies, other foreign policy makers or military control. Political risk is also known as "geopolitical risk," and becomes more of a factor as the time horizon of an investment gets longer. Political risks are hard to quantify because there are limited sample sizes or case studies when discussing an individual nation or a region.

#### *Risks related to Brexit*

24.40 The United Kingdom (UK) held a referendum on 23 June 2016 at which the electorate voted to leave the EU. When article 50 of the Treaty of Lisbon (the **Treaty**) will be invoked, the Treaty provides for a two year negotiation period which may be shortened or extended by agreement of the parties. During, and possibly after, this period there is likely to be considerable uncertainty as to the position of the UK and the arrangements which will apply to its relationships with the EU and other countries following its withdrawal. This uncertainty may affect other countries in the EU, or elsewhere, if they are considered to be impacted by these events.

24.41 A relevant Compartment may invest in assets which have an exposure to the UK and even when assets have an exposure the EU, they may as a result of Brexit be indirectly affected. The impact of Brexit on the Compartment is difficult to predict but there may be detrimental implications for the value of certain of the Investments, or its ability to enter into transactions or to value or realise these Investments. This may be due to, among other things:

24.41.1 Increased uncertainty and volatility in UK and EU financial markets;

24.41.2 Fluctuations in the market value of Great Britain Pound (GBP) and of UK and EU assets;

24.41.3 Fluctuations in exchange rates between GBP, EUR and other currencies;

24.41.4 Increased illiquidity of Investments located or listed within the UK or the EU; and/or

24.41.5 The willingness of financial counterparties to enter into transactions or the price at which they are prepared to transact in relation to the management of the Compartment's investment, currency and other risks.

### **Operational risks**

#### *Financial failure of intermediaries*

24.42 There is always the possibility that the institutions, including brokerage firms and banks, with which the Company or any of their agents do business, or to which securities have been

entrusted for custodial purposes, will encounter financial difficulties that may impair their operational capabilities or result in losses to the Company or any of its Compartment.

#### *Counterparty risk*

- 24.43 The Company or any of their agents may have an exposure to one or more counterparties by virtue of its Investments. To the extent that the counterparty defaults on its obligation and the Company or any of their agents is delayed or prevented from exercising its rights the Company may experience a decline in the value of its position, lose income and incur costs associated with asserting its rights. These risks will increase where the Company or any of their agents uses only a limited number of counterparties.

#### *Suspensions of trading*

- 24.44 Each exchange typically has the right to suspend or limit trading in all securities that it lists. Such a suspension could render it impossible for the account of the relevant Compartment to liquidate its positions and thereby expose it to losses. In addition, there is no guarantee that non-exchange markets will remain liquid enough for a Compartment to close out positions.

#### *Cyber Crime and security breaches*

- 24.45 With the increasing use of the internet and technology in connection with the Compartment's operations, the Alternative Investment Fund Manager or any Service Provider are susceptible to greater operational and information security risks through breaches in cyber security. Cyber security breaches include, without limitation, infection by computer viruses and gaining unauthorised access to the systems through "hacking" or other means for the purpose of misappropriating assets or sensitive information, corrupting data, or causing operations to be disrupted. Cyber security breaches may also occur in a manner that does not require gaining unauthorised access, such as denial-of-service attacks or situations where authorised individuals intentionally or unintentionally release confidential information stored on the systems. A cyber security breach may cause disruptions and impact the business operations, which could potentially result in financial losses, inability to determine the Compartment's NAV, violation of applicable law, regulatory penalties and/or fines, compliance and other costs. The Compartment and its investors could be negatively impacted as a result. In addition, because the Company, the Alternative Investment Fund Manager or any Service Provider work closely with third-party service providers, indirect cyber security breaches at such third-party service providers may subject any Compartment to the same risks associated with direct cyber security breaches.

### **Legal and regulatory risks**

#### *Prevention on money laundering and terrorist financing*

- 24.46 The Company or any Service Provider may be required by law, regulation or government authority to suspend the account of an Investor or take other anti-money laundering steps. Where the Company or any Service Provider is required to take such an action, the relevant Investor must indemnify the Company or the relevant Service Provider against any loss suffered by it.

#### *Change of laws and regulations*

- 24.47 Tax law may be subject to changes as mentioned in Section 19.13.

24.48 Other laws and regulations may also be subject to changes which may impact adversely on the accuracy of statements contained in this Memorandum which are given only as at the date specified in the Memorandum and in the way in which the Company is operated.

**Sustainability risk**

24.49 The sustainability risk, which is defined in Article 2 of SFDR as an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment.

Sustainability risks can either represent a risk of its own or have an impact on other portfolio risks. The aim of the Company is to identify the occurrence of sustainability risks in a timely manner in order to take appropriate measures to mitigate the impact on the investments or the overall portfolio. The events that may be responsible for a negative impact on the return are environmental, social and corporate governance factors. Environmental factors relate to a company's interaction with the physical environment such as climate mitigation, social factors include, among others, compliance with employment safety and labor rights and corporate governance factors include, for example, the consideration of employee's rights and data protection.

Additionally, key risk indicators can be used to assess sustainability risks. The key risk indicators can be of quantitative or qualitative nature and are based on ESG aspects and measure the risk of the aspects under consideration.

**25. AMENDMENTS TO THE GENERAL SECTION**

25.1 The Board may amend the provisions of this General Section in accordance with the 2016 Act as follows:

25.1.1 Where the change is determined by the Board not to be material, upon decision of the Board; or

25.1.2 Where the change is determined by the Board to be material, only a Company's Consent.

25.2 Amendment of the investment objective, strategy or restrictions is a material change in the meaning of Section 25.1.1.

25.3 Shareholders will be notified by the Company (or by the Alternative Investment Fund Manager) of all amendments that are adopted without their consent in accordance with Section 25.1.1. Shareholders will be notified in advance of any proposed material change to the Memorandum to ensure that they are able to make an informed judgment in respect of the expected amendments pursuant to Section 25.1.2.

25.4 No variation may be made to this Section 25 without unanimous consent of all Shareholders and of the initiators. Any amendment to this General Section that would result in a discrepancy between the terms and provisions of the Articles and those of this Memorandum shall be subject to the prior amendment of the Articles, in accordance with the provisions of the 1915 Act and the Articles.

## SPECIAL SECTION I

### K&R – EUROPEAN VALUE FUND

This Special Section is valid only if accompanied by the General Section of the Memorandum. This Special Section refers only to K&R – European Value Fund (the **Compartment**).

#### 1. INVESTMENT POLICY

##### **Investment objective and strategy**

- 1.1 The investment objective is to preserve and increase the value of the assets of the Compartment in the long-term that are invested under the principle of risk spreading by following a value focused strategy.
- 1.2 In pursuing the investment objective, the Investment Committee seeks under the supervision of the Alternative Investment Fund Manager to build a portfolio composed by European stocks listed on Regulated Markets.
- 1.3 The Investment Committee and the Alternative Investment Fund Manager consider that there are no Sustainability Risks which are deemed to be relevant in respect of the Compartment. This assessment is without prejudice to the application, in particular of the obligations on financial market participants and financial advisers as regards product governance, assessments of suitability and appropriateness. Therefore, Sustainability Risks are not integrated in the investment decisions at this stage. Indeed, the Compartment does not pursue or promote ESG objective for the moment nor has sustainable investments' objectives.

##### **Investment restrictions**

- 1.4 Investments made by the Compartment are subject the restrictions set forth under Section 3.4 of the General Section.
- 1.5 There are no restrictions as to the sector or country concentration and no restrictions as to market capitalisation.
- 1.6 No cash or securities can be borrowed for the Compartment and no position in financial derivatives shall be opened for the account of the Compartment.
- 1.7 The Compartment's portfolio will continuously invest at least 51% of its assets in equities.

Equity investments are:

- shares in a stock corporation which are officially licensed to be traded on a stock exchange or shares listed on an organised market,
- shares in a stock corporation which is not a property company and which
  - a) is based in a Member State of the European Union or in another signatory state to the Agreement on the European Economic Area and is subject there to taxation on earnings of stock corporations, and is not exempt from it, or
  - b) is based in a third country, and is subject there to taxation on earnings of stock corporations to an amount of at least 15%, and is not exempt from it,

- investment certificates in equity funds to an amount of 51% of the value of the investment certificate, or
- investment certificates in balanced funds to an amount of 25% of the value of the investment certificate.

Financial derivatives which synthetically represent the performance of equity investments by means of such derivatives (e.g. equity futures) do not constitute equity investments.

**Monitoring of investment restrictions**

- 1.8 If an Investment Restriction is breached by reason other than an acquisition or purchase of an Investment and including the case where an Investment Restriction is breached due to an increase or decrease of the value of the Investment (the **Passive Breach**), the Alternative Investment Fund Manager will seek to remedy the Passive Breach, but will only do so if it reasonably considers it to be in the best interests of the Compartment. In addition, it will not commit to any new Investment that may aggravate the Passive Breach. Likewise, the Investment Restrictions will not be considered as being actively breached as a result of an Investment being disposed of during the liquidation phase of the Compartment.
- 1.9 The Alternative Investment Fund Manager will monitor the applicable investment restrictions but shall not be required to take immediate remedial action to comply with any such restriction, if:
- 1.9.1 The failure to comply with the restriction results in an event which is beyond the control of the Alternative Investment Fund Manager; or
- 1.9.2 The Alternative Investment Fund Manager deems it advisable or in the best interest of the Compartment to dispose of or otherwise take action with respect to the relevant Investment.
- 1.10 The materiality threshold under CSSF Circular 02/77 has been set by the Board at 2% of the NAV.

**Temporary Investments**

- 1.11 The Compartment may hold Liquid Assets as Temporary Investments as well as for operational purposes.

**2. REFERENCE CURRENCY**

- 2.1 The Reference Currency of the Compartment is EUR.

**3. TERM OF THE COMPARTMENT**

- 3.1 The Compartment has been created for an unlimited period of time.

**4. CLASSES – ALLOCATION OF PERFORMANCE**

- 4.1 The following two Classes have been created for this Compartment:

Class	Reference Currency	Type of Investors	Dividend	Issuance price during Initial Offering Period

Class A	EUR	Any Well-Informed Investor who is not a Restricted Person	No (capitalisation Class)	EUR 1,000
Class B	EUR	Only the founding Shareholders	No (capitalisation Class)	EUR 1

After the Initial Offering Period, Issuance Price for new shares is the NAV per Share as of the applicable Valuation Date.

- 4.2 The **Excess Performance** of each Class is the net performance (after expenses, amortizations and provisions) exceeding the High Water Mark determined on pre-performance basis as of each Valuation Date.
- 4.3 The **High Water Mark** is the highest net NAV (net of all fees, expenses and provisions) of Class A reached at any of the previous 24 monthly Valuation Dates – the High Water Mark will be rolled-up after each 24<sup>th</sup> Valuation Date.
- 4.4 As of each Valuation Date,
- 4.4.1 80% of the Excess Performance of Class A will be allocated to the Shares of Class A; and
- 4.4.2 100% of the Performance of Class B increased by 20% of the Excess Performance of Class A will be allocated to the Shares of Class B.
- 4.5 Where the net performance (excluding Expenses, amortizations and provisions) does not exceed the High Water Mark, the net performance will be allocated au prorata among all Shares of Class A and Class B.
- 4.6 The number of Shares of Class B in this Compartment is limited to 500,000 Shares. Additional Shares of Class B can only be issued subject the unanimous consent of the Shareholders of Class B. The price per Share of Class B will be EUR 1 unless otherwise decided by the Board subject the unanimous consent of the Shareholders of Class B.

## 5. SUBSCRIPTION OF SHARES

### Subscription of Shares of Class A after the Initial Subscription Period

- 5.1 Any new Investor wishing to subscribe Shares of Class A after the Initial Subscription Period should complete the Subscription Agreement (together with its appendixes and required documents) and submit it to the Fund Administrator (by e-mail with the original Subscription Agreement and the appendixes and required documents attached thereto sent via airmail), together with a wire transfer for the full amount of the subscription, for the first Business Day following the Valuation Date which lies at the end of the calendar quarter (the **Subscription Date**). Existing Investors wishing to subscribe additional shares may send their subscription orders per fax, swift or mail. Subscription requests must be received at 16:00 (Luxembourg time) two Business Days before the Subscription Date.
- 5.2 Subscription monies must be paid by wire transfer and should be remitted net of bank charges in accordance with the wire transfer instructions set forth in the Subscription Agreement.

- 5.3 A subscription for Shares of Class A will not be processed and Shares of Class A will not be allotted until receipt of notification by the Depositary that the relevant Investor's funds have been paid in for the full amount of the subscription.
- 5.4 The Board of Directors, the Fund Administrator and the Alternative Investment Fund Manager are entitled to reject a subscription request and to block it if the Subscription Agreement (including the required information and documents) are not complete.
- 5.5 If a subscription is not accepted or is accepted only in part, the amount paid on the subscription or the balance thereof will be returned without interest and returned at the risk of the Investor.

## 6. REDEMPTION AND CONVERSION OF SHARES

### Redemption process

- 6.1 Unless redemptions are suspended or redemption payments are delayed, Shares in any Class may be redeemed by a Shareholder at the NAV of that Class as of the last calendar day of each quarter on the following Business Day (the **Redemption Date**) by sending a redemption request to the Fund Administrator. Redemption requests must be received at 16:00 (Luxembourg time) on the last Business Day a month before the Redemption Date.

### Redemption fee

- 6.2 When redeeming Shares of Class A, the following redemption fee will be paid to the Compartment unless waived or reduced by the Board. No redemption fee will be charged on Shares of Class B.

Holding period of redeemed shares	Redemption fee applicable to Shares of Class A
Less than 12 months	2.00% of the NAV
More than 12 months but less than 24 months	1.00% of the NAV
More than 24 months	0.00% of the NAV

### Payment of redemption proceeds

- 6.3 Subject to certain restrictions and unless redemptions have been suspended, net redemption proceeds will be paid by wire transfer (at the expense of the redeeming Shareholder) of the redemption amount to the own account designated by the Shareholder in the request for redemption. Subject to the Subscription Agreement or any side letter, redemption proceeds will generally be paid within a reasonable period of time after the approval of the applicable NAV. Investors should be aware that the relevant redemption price will be based on unaudited accounts.

### Suspension of redemption of Shares

- 6.4 In addition to Section 14 of the General Section, the Board may suspend or defer the execution of a redemption or delay the payment of redemption proceeds when
- 6.4.1 The Compartment has not sufficient liquidity, provided that the Board must take all necessary steps within a reasonable period of time to increase the level of



liquidity of the Compartment to enabling the Company to fulfil its obligations;  
or

- 6.4.2 The Board reasonably considers that some Investments are hard to value delaying the calculation of the NAV or requiring additional time to review the NAV.

### **Conversion of Shares**

- 6.5 Conversion of Shares of Class A into Shares of Class B or vice versa is not permitted.
- 6.6 Conversion of Shares of Class A of this Compartment into Shares of Class A of another Compartment, where possible, is only permitted upon the consent of the Board.
- 6.7 Conversion of Shares of Class B of this Compartment into Shares of Class B of another Compartment, where possible, is only permitted upon the consent of the Board and subject to the unanimous consent of the Shareholders of Class B of each Compartment.
- 6.8 Unless redemptions are suspended or redemption payments are delayed, Shares in any Class may be converted by a Shareholder at the NAV of that Class as of the last calendar Business Day into Shares of such other Class at the NAV of such Class as of the last calendar Business Day of each month on the first following Business Day (the Conversion Date) by sending a conversion request to the Fund Administrator. Conversion requests must be received at 16:00 (Luxembourg time) 10 Business Days before the Conversion Date. No redemption fee is charged for conversion of Shares.

## **7. VALUATION DATE**

- 7.1 The NAV will be date of the last calendar day of each month (the **Valuation Date**) and calculated within 1 Business Day.
- 7.2 The Company may instruct the Fund Administrator to calculate one or more additional NAVs.

## **8. INVESTMENT COMMITTEE**

- 8.1 The Alternative Investment Fund Manager has established for the Compartment an Investment Committee.
- 8.2 The Investment Committee has received full authority to act on behalf of the Compartment in all matters concerned with the daily management of the Compartment's portfolio.

## **9. REMUNERATION OF SERVICE PROVIDERS**

### **Alternative Investment Fund Manager**

- 9.1 The Company will pay to the Alternative Investment Fund Manager a Management Fee set at a maximum of 0.8% of the NAV of Class A with an annual minimum charge of EUR 10,000. No Management Fee will be charged on Class B.
- 9.2 The Management Fee is charged to the Compartment and paid monthly in arrears to the Alternative Investment Fund Manager.

Further information on the remuneration of the Alternative Investment Fund Manager is available upon request at the registered office of the Alternative Investment Fund Manager.

- 9.3 The Company will pay to the Fund Administrator, a fee of up to EUR 13'700 per year, plus administrative costs in the amount of a maximum of 0.1% of the NAV of Class A (the **Administrative Fee**). No administrative fee will be charged on Class B.
- 9.4 The Administrative Fee are charged to the Compartment and paid monthly in arrears to the Fund Administrator.
- 9.5 Further information on the remuneration of the Fund Administrator is available upon request at the registered office of the Alternative Investment Fund Manager.

### **Depository**

- 9.6 The Depository will receive a remuneration for its custody services of up to 0.06% of the NAV with an annual minimum charge of EUR 12,500. Further information on the remuneration of the Depository is available upon request at the registered office of the Alternative Investment Fund Manager.
- 9.7 The remuneration of the Depository is charged to the Compartment under the supervision of the Alternative Investment Fund Manager and paid monthly in arrears to the Depository.

## **10. AMENDMENTS TO THIS SPECIAL SECTION**

- 10.1 The Board may amend the provisions of this Special Section in accordance with the 2016 Act as follows:
- 10.1.1 Where the change is determined by the Board not to be material, upon decision of the Board; or
- 10.1.2 Where the change is determined by the Board to be material, only following a Compartment's Consent.
- 10.2 Amendment of the investment objective, strategy or restrictions is a material change in the meaning of Section 10.1.1.
- 10.3 Shareholders will be notified by the Company (or by the Alternative Investment Fund Manager or by the Fund Administrator) of all amendments that are adopted without their consent in accordance with Section 10.1.1 of this Special Section. Shareholders will be notified in advance of any proposed material change to the Memorandum to ensure that they are able to make an informed judgment in respect of the expected amendments pursuant to Section 10.1.2 of this Special Section.
- 10.4 No variation may be made to this Section 10 without unanimous consent of all Shareholders in the Compartment. Any amendment to this Special Section that would result in a discrepancy between the terms and provisions of the Articles and those of this Memorandum shall be subject to the prior amendment of the Articles, in accordance with the provisions of the 1915 Act and the Articles.

## SPECIAL SECTION III

### K&R – UNIVERSAL INCOME FUND

This Special Section is valid only if accompanied by the General Section of the Memorandum. This Special Section refers only to K&R – Universal Income Fund (the **Compartment**).

#### 11. INVESTMENT POLICY

##### **Investment objective and strategy**

11.1 The investment objective is to preserve and increase the value of the assets of the Compartment in the long-term that are invested by following an alternative income focused strategy, by investing either directly or indirectly in private debt funds and other high-yielding assets. The Sub-Fund will invest opportunistically in each fund or asset, offering the most interesting balance of return and other factors without being restricted by fixed allocation guidelines. Nevertheless, the Sub-Fund will seek to build, to the extent possible, a well-balanced and diversified portfolio across geographies and underlying strategies.

11.2 In pursuing the investment objective, the Investment Committee seeks under the supervision of the Alternative Investment Fund Manager to build a portfolio composed of diversified assets and strategies, listed and unlisted, generating investment income.

The Compartment is focused but not limited to North American and Western European countries. The Compartments may take an opportunistic approach should other potentially attractive projects be identified.

The Compartment will invest, directly or indirectly in fixed income funds, structured or assets (regulated or not) which may have varying terms and structures including, but not limited to limited partnership structures, master/feeder structures, joint venture agreements and other contractual arrangements. The Compartment may also invest in debt funds via Special purpose vehicles.

The Compartment may invest, in compliance with the investment restrictions and the investment policy of the Compartment, in shares / units of Undertakings for Collective Investments (UCIs) and/or Undertakings for Collective Investment in Transferable Securities (UCITS) listed or not, any bonds listed or not, as well as in other debt securities, any structured notes and securitized certificates, equities and equity-linked instruments.

11.3 Investors are informed that, at the Alternative Investment Fund Manager's discretion, a significant proportion of the Compartment's assets may be concentrated, at the same time, in one or more collective investment schemes, taking due care that the latter(s) has(ve) equivalent diversification rules to those applicable to the Compartment. The number of investments in the portfolio may be limited and may vary at the discretion of the Alternative Investment Fund Manager, who will be continuously looking for new opportunities and may therefore buy or sell according to the Compartment's investment objectives and policy.

Finally, the Investment Committee and the Alternative Investment Fund Manager consider that there are no Sustainability Risks which are deemed to be relevant in respect of the Compartment. This assessment is without prejudice to the application, in particular of the obligations on financial market participants and financial advisers as regards product governance, assessments of suitability and appropriateness. Therefore, Sustainability Risks are not integrated in the investment decisions at this stage. Indeed, the Compartment does not pursue or promote ESG objective for the moment nor has sustainable investments'

objectives.

In pursuing the investment objective, the Investment Committee will, under the supervision of the Alternative Investment Fund Manager acquire, by "cherry picking", a portfolio of funds and assets in all kinds of private debt and alternative income situations across the whole fixed income strategies spectrum including, but not limited to, trade finance, royalty financing, life settlements, structured credit, SME lending, litigation finance, PtoP lending, insurance-linked products, royalty income, receivable finance, regulatory capital, listed private equity debt, real estate lending.

Cash management and FX practices will be put in place to achieve operational efficiency. In this regard, the Compartment may invest part or all of its excess liquidity in classic fixed income instruments (including but not limited to sovereign debt, corporate bonds, convertible bonds, etc.).

Cash management and FX practices for hedging purposes may be accomplished either by cash investments (money market instruments, government bonds or credit, other funds) or through the use of financial derivatives (such as futures, options, forwards, swaps, credit linked instruments, and other fixed income, currency and credit derivatives including but not limited to, foreign exchange forward contracts, non-deliverable forwards, single name credit default swaps and indices of credit default swaps, asset back securities), through the taking of both long and short positions within the investment universe.

INVESTMENT IN FINANCIAL DERIVATIVE INSTRUMENTS MAY BE CARRIED OUT FOR THE PURPOSES OF HEDGING. THE GEARING EFFECT OF INVESTING IN SOME FINANCIAL DERIVATIVE INSTRUMENTS AND THE VOLATILITY OF SUCH INSTRUMENTS MAY DETERMINE THE RISK OF INVESTMENT IN THE COMPARTMENT BE HIGHER THAN IN THE CASE OF CONVENTIONAL INVESTMENT POLICIES.

#### **Investment restrictions**

- 11.4 Investments made by the Compartment are subject the restrictions set forth under Section 3.4 of the General Section.
- 11.5 There are no restrictions as to the sector or country concentration and no restrictions as to market capitalisation.
- 11.6 Cash or securities can be borrowed for the Compartment and financial derivatives can be opened for the account of the Compartment, including derivatives for the purpose of foreign exchange hedging.
- 11.7 The Compartment's portfolio will continuously invest at least 51% of its assets in non-cash securities (except for its Kick-Off Period, see section 11.10 and 11.11).

#### **Monitoring of investment restrictions**

- 11.8 If an Investment Restriction is breached by reason other than an acquisition or purchase of an Investment and including the case where an Investment Restriction is breached due to an increase or decrease of the value of the Investment (the **Passive Breach**), the Alternative Investment Fund Manager will seek to remedy the Passive Breach, but will only do so if it reasonably considers it to be in the best interests of the Compartment. In addition, it will not commit to any new Investment that may aggravate the Passive Breach. Likewise, the

Investment Restrictions will not be considered as being actively breached as a result of an Investment being disposed of during the liquidation phase of the Compartment.

11.9 The Alternative Investment Fund Manager will monitor the applicable investment restrictions but shall not be required to take immediate remedial action to comply with any such restriction, if:

11.9.1 The failure to comply with the restriction results in an event which is beyond the control of the Alternative Investment Fund Manager; or

11.9.2 The Alternative Investment Fund Manager deems it advisable or in the best interest of the Compartment to dispose of or otherwise take action with respect to the relevant Investment.

11.10 The materiality threshold under CSSF Circular 02/77 has been set by the Board at 2% of the NAV.

**Kick-off Period**

11.11 The Board sets the Kick-off Period at six months starting from the date of the end of the Initial Subscription Period. The Board is entitled to reduce the Kick-off Period.

11.12 During the Kick-off Period, the Investment Committee of the Alternative Investment Fund Manager will build-up the Compartment’s portfolio.

**Temporary Investments**

11.13 The Compartment may hold Liquid Assets as Temporary Investments as well as for operational purposes.

**12. REFERENCE CURRENCY**

12.1 The Reference Currency of the Compartment is EUR.

**13. TERM OF THE COMPARTMENT**

13.1 The Compartment has been created for an unlimited period of time.

**14. CLASSES – ALLOCATION OF PERFORMANCE**

14.1 The following three Classes have been created for this Compartment:

Class	Currency	Hedged	Type of Investors	Dividend	Issuance price during Initial Offering Period
Class A	EUR	N/A	Any Well-Informed Investor who is not a Restricted Person	No (capitalisation Class)	EUR 1,250

Class B	EUR	N/A	Only the founding Shareholders	No (capitalisation Class)	EUR 1
Class C	CHF	Yes	Any Well-Informed Investor who is not a Restricted Person	No (capitalisation Class)	CHF 1,250

After the Initial Offering Period, Issuance Price for new shares is the NAV per Share as of the applicable Valuation Date

- 14.2 The **Excess Performance** of each Class is the net performance (after expenses, amortizations and provisions) exceeding the High Water Mark determined on pre-performance basis as of each Valuation Date.
- 14.3 The **High Water Mark** is the higher of a) the highest net NAV (net of all fees, expenses and provisions) of Class A and Class C reached at any of the previous 24 monthly Valuation Dates. The High Water Mark will be rolled-up after each 24<sup>th</sup> Valuation Date.
- 14.4 As of each Valuation Date,
- 14.4.1 90% of the Excess Performance of Class A will be allocated to the Shares of Class A; and
- 14.4.2 90% of the Excess Performance of Class C will be allocated to the Shares of Class C; and
- 14.4.3 100% of the Performance of Class B increased by 10% of the Excess Performance of Class A and by 10% of the Excess Performance of Class C will be allocated to the Shares of Class B.
- 14.5 Where the net performance (excluding Expenses, amortizations and provisions) does not exceed the High Water Mark, the net performance will be allocated au prorata among all Shares of Class A, Class B and Class C.
- 14.6 The number of Shares of Class B in this Compartment is limited to 2'000'000 Shares. Additional Shares of Class B can only be issued subject the unanimous consent of the Shareholders of Class B. The price per Share of Class B will be EUR 1 unless otherwise decided by the Board subject the unanimous consent of the Shareholders of Class B.

## 15. SUBSCRIPTION OF SHARES

### Initial Subscription Period

- 15.1 Shares of Class A and Class C can be subscribed for the first time during the Initial Subscription Period which starts 12 November 2021 at 13:00 (Luxembourg time) and ends on 30 March 2022 at 13:00 (Luxembourg time). The Initial Subscription Period may be extended or terminated earlier by the Board acting in its sole discretion, provided that Investors will be duly informed of such decision.

- 15.2 The Subscription Agreement (together with its appendixes and required documents) must be received by the Fund Administrator (by e-mail with the original Subscription Agreement and the appendixes and required documents attached thereto sent via airmail), together with a wire transfer for the full amount of the subscription, at latest on 30 March 2022 at 16:00 (Luxembourg time), subject to the Board's discretion to determine otherwise and provided that Investors will be duly informed of such decision, at which point the application will be accepted provided that it complies with the provisions herein.

#### **Subscription of Shares of Class A and Class C after the Initial Subscription Period**

- 15.3 Any Investor wishing to subscribe Shares of Class A and Class C after the Initial Subscription Period should complete the Subscription Agreement (together with its appendixes and required documents) and submit it to the Fund Administrator (by e-mail with the original Subscription Agreement and the appendixes and required documents attached thereto sent via airmail), together with a wire transfer for the full amount of the subscription, for the first Business Day following the Valuation Date which lies at the end of the calendar month (the **Subscription Date**). Subscription requests must be received at 16:00 (Luxembourg time) one Business Day before the Subscription Date.
- 15.4 Subscription monies must be paid by wire transfer and should be remitted net of bank charges in accordance with the wire transfer instructions set forth in the Subscription Agreement.
- 15.5 A subscription for Shares of Class A and Class C will not be processed and Shares of Class A and Class C will not be allotted until receipt of notification by the Depositary that the relevant Investor's funds have been paid in for the full amount of the subscription.
- 15.6 The Board of Directors, the Fund Administrator and the Alternative Investment Fund Manager are entitled to reject a subscription request and to block it if the Subscription Agreement (including the required information and documents) are not complete.
- 15.7 If a subscription is not accepted or is accepted only in part, the amount paid on the subscription or the balance thereof will be returned without interest and returned at the risk of the Investor.

### **16. REDEMPTION AND CONVERSION OF SHARES**

#### **Redemption process**

- 16.1 Unless redemptions are suspended or redemption payments are delayed, Shares in any Class may be redeemed by a Shareholder at the NAV of that Class as of the last calendar day of each month on the following Business Day (the **Redemption Date**) by sending a redemption request to the Fund Administrator. Redemption requests must be received at 16:00 (Luxembourg time) on the last Business Day two months before the Redemption Date.

#### **Redemption fee**

- 16.2 When redeeming Shares of Class A, Class B and Class C, no redemption fee will be charged.

#### **Payment of redemption proceeds**

- 16.3 Subject to certain restrictions and unless redemptions have been suspended, net redemption proceeds will be paid by wire transfer (at the expense of the redeeming Shareholder) of the redemption amount to the own account designated by the Shareholder in the request for

redemption. Subject to the Subscription Agreement or any side letter, redemption proceeds will generally be paid within a reasonable period of time after the approval of the applicable NAV. Investors should be aware that the relevant redemption price will be based on unaudited accounts.

#### **Suspension of redemption of Shares**

16.4 In addition to Section 14 of the General Section, the Board may suspend or defer the execution of a redemption or delay the payment of redemption proceeds when

16.4.1 The Compartment has not sufficient liquidity, provided that the Board must take all necessary steps within a reasonable period of time to increase the level of liquidity of the Compartment to enabling the Company to fulfil its obligations; or

16.4.2 The Board reasonably considers that some Investments are hard to value delaying the calculation of the NAV or requiring additional time to review the NAV.

#### **Conversion of Shares**

16.5 Conversion of Shares of Class A and Class C into Shares of Class B or vice versa is not permitted.

16.6 Conversion of Shares of Class A into Shares of Class C or vice versa is permitted.

16.7 Conversion of Shares of Class A and Class C of this Compartment into Shares of Class A of another Compartment, where possible, is permitted.

16.8 Conversion of Shares of Class B of this Compartment into Shares of Class B of another Compartment, where possible, is only permitted upon the unanimous consent of the Shareholders of Class B of each Compartment.

16.9 Unless redemptions are suspended or redemption payments are delayed, Shares in any Class may be converted by a Shareholder at the NAV of that Class as of the last calendar Business Day into Shares of such other Class at the NAV of such Class as of the last calendar Business Day of each month on the first following Business Day (the Conversion Date) by sending a conversion request to the Fund Administrator. Conversion requests must be received at 16:00 (Luxembourg time) 10 Business Days before the Conversion Date. No redemption fee is charged for conversion of Shares.

### **17. VALUATION DATE**

17.1 The NAV will be dated as of the last calendar day of each month (the **Valuation Date**) and calculated within 1 Business Day.

17.2 The Company may instruct the Fund Administrator to calculate one or more additional NAVs.

### **18. INVESTMENT COMMITTEE**

18.1 The Alternative Investment Fund Manager has established for the Compartment an Investment Committee.

18.2 The Investment Committee has received full authority to act on behalf of the Compartment in all matters concerned with the daily management of the Compartment's portfolio.



## **19. REMUNERATION OF SERVICE PROVIDERS**

### **Alternative Investment Fund Manager**

- 19.1 The Company will pay to the Alternative Investment Fund Manager a Management Fee set at a maximum of 0.7% of the NAV of Class A and Class C with an annual minimum charge of EUR 10,000. No Management Fee will be charged on Class B.
- 19.2 The Management Fee is charged to the Compartment and paid monthly in arrears to the Alternative Investment Fund Manager.
- 19.3 Further information on the remuneration of the Alternative Investment Fund Manager is available upon request at the registered office of the Alternative Investment Fund Manager.
- 19.4 For the period starting on the launch date of the Compartment and ending on 31 December of the same year, the Alternative Investment Fund Manager will be entitled to receive its remuneration on a pro-rata basis.

### **Fund Administrator**

- 19.5 The Company will pay to the Fund Administrator, a fee of up to EUR 20'000 per year, plus administrative costs in the amount of a maximum of 0.1% of the NAV of Class A and Class C (the **Administrative Fee**). No administrative fee will be charged on Class B. Further information on the remuneration of the Fund Administrator is available upon request at the registered office of the Alternative Investment Fund Manager.
- 19.6 The Administrative Fee is charged to the Compartment and paid monthly in arrears to the Fund Administrator.
- 19.7 For the period starting on the launch date of the Compartment and ending on 31 December of the same year, the Fund Administrator will be entitled to receive its remuneration on a pro-rata basis.

### **Depositary**

- 19.8 The Depositary will receive a remuneration for its custody services of up to 0.10% of the NAV with an annual minimum charge of EUR 12'000. Further information on the remuneration of the Depositary is available upon request at the registered office of the Alternative Investment Fund Manager.
- 19.9 The remuneration of the Depositary is charged to the Compartment under the supervision of the Alternative Investment Fund Manager and paid monthly in arrears to the Depositary.
- 19.10 For the period starting on the launch date of the Compartment and ending on 31 December of the same year, the Depositary will be entitled to receive its remuneration on a pro-rata basis.

## **20. AMENDMENTS TO THIS SPECIAL SECTION**

- 20.1 The Board may amend the provisions of this Special Section in accordance with the 2016 Act as follows:
- 20.1.1 Where the change is determined by the Board not to be material, upon decision of the Board; or

- 20.1.2 Where the change is determined by the Board to be material, only following a Compartment's Consent.
- 20.2 Amendment of the investment objective, strategy or restrictions is a material change in the meaning of Section 10.1.1.
- 20.3 Shareholders will be notified by the Company (or by the Alternative Investment Fund Manager or by the Fund Administrator) of all amendments that are adopted without their consent in accordance with Section 10.1.1 of this Special Section. Shareholders will be notified in advance of any proposed material change to the Memorandum to ensure that they are able to make an informed judgment in respect of the expected amendments pursuant to Section 10.1.2 of this Special Section.
- 20.4 No variation may be made to this Section 10 without unanimous consent of all Shareholders in the Compartment. Any amendment to this Special Section that would result in a discrepancy between the terms and provisions of the Articles and those of this Memorandum shall be subject to the prior amendment of the Articles, in accordance with the provisions of the 1915 Act and the Articles.

## **21. SPECIFIC RISK CONSIDERATIONS**

- 21.1 Investors should be willing to accept a high degree of volatility in the price of the Compartment's shares and the possibility of significant losses. Investors are advised to carefully consider the risks of the Compartment and should refer in relation thereto to the section "Risk Considerations" in the Offering Memorandum and the particular risk factors listed below that do not necessarily represent an exhaustive list of such risks.
- 21.2 Credit risk: the Investors should acknowledge that the portfolio of the Compartment will be composed of Private debt funds and comparable instruments and will therefore be indirectly invested in companies subject to the risks associated with debt financing, it is subject to the risks that available funds will be insufficient to meet required payments and the risk that existing indebtedness will not be refinanced or that the terms of such refinancing will not be as favorable as the terms of existing indebtedness.
- 21.3 Portfolio valuation risks: the Investors should acknowledge that the portfolio of the Compartment will be composed of Private debt funds and comparable instruments of different natures in terms of inter alia sectors, geographies, financial statements formats, reference currencies, accounting principles, types and liquidity of securities, coherence and comprehensiveness of data. The Board of Directors will rely on the information and valuation data provided by the underlying funds managers, which data may not always be provided in a timely manner and may contain valuation errors. The instruments held by the Compartment may not be conducive to ready valuation, and there can be no assurance that the valuation presented in the reports of the Compartment will reflect the value that the Compartment or the investors will realize with respect to such investment. The valuation methods may be altered from time to time and any change in valuation method would be expected to result in apparent changes in the value of an investment in the Compartment.
- 21.4 Inadvertent Concentration: Although the Investment Committee and the Alternative Investment Fund Manager will seek to monitor the instruments and funds in which the Compartment's assets may have been invested, it is possible that a number of instruments might take substantial positions in the same security, financial instrument or market sector at the same time. This inadvertent concentration would interfere with the Compartments diversification.

- 21.5 Risks associated with the investment in unregulated underlying funds: As the Compartment may invest in underlying funds and instruments domiciled in jurisdictions where these vehicles are not subject to a recognized supervisory regime providing investors with equivalent protection to that available in Luxembourg, investments in any of such underlying funds or instruments are subject to a corresponding risk. Although the risks inherent to investments in underlying funds and instruments (whether regulated or unregulated) should as a rule be limited to the loss of the initial investment contributed, the Investors must nevertheless be aware that investments in unregulated underlying funds are more risky than investments in regulated underlying funds. This may be due to fact that such unregulated underlying funds may not be subject to regulatory and leverage/borrowing restrictions and/or to the absence of accounting standards or to the absence of a supervisory authority imposing rules and regulations to the entity exercising the depositary and/or central administration functions. Furthermore, the legal infrastructure and accounting, auditing and reporting standards in certain jurisdictions where these unregulated underlying funds are set up may not provide the same degree of investor protection or information to investors as would generally apply in major securities markets. As a consequence of the foregoing, unregulated funds are generally considered to be a higher risk investment.
- 21.6 Lack of liquidity: As the Compartment invests in underlying debt funds and high-yielding instruments, it may be unlikely that there will be a public market for the interests in such underlyings, whose transfer may be restricted or prohibited by their constitutive documents or subscription documents. In addition, the investment in the underlying funds may require a substantial length of time to liquidate and the liquidation process of the Compartment may consequently require a substantial length of time further to the decision to liquidate the Compartment.
- 21.7 Key Person Risk: The Compartment's success depends strongly from the Investment Committee members' ability to identify, select assets that the Investment Committee believes offer the potential for superior returns, as well as the availability of appropriate investments. Although the Investment Committee may believe that significant opportunities exist, there can be no assurance that the Investment Committee will be able to identify, select and make a sufficient number of investment opportunities to permit the Compartment to invest all of its assets. There can be no assurance that the investing and/or trading methods employed by the Investment Committee and the AIFM will produce profits. Moreover, the Investment Committee and the AIFM are dependent on the services of a limited number of key persons, and if the services of such persons were to become unavailable, this might have a serious impact on the Compartment's performance and continuity.

Reliance on the board of directors, AIFM, and Investment Committee: The Board of directors has overall responsibility to manage the business affairs of the Fund and hence the Compartment. The Board of directors has appointed the Alternative Investment Fund Manager as external alternative investment manager of the Fund under the meaning of the AIFM Law. The Investment Committee may consult with the Board of directors and the AIFM regarding the management of the Compartment and specific investment opportunities, but the Investment Committee will not make decisions regarding such issues on the Compartment's, or the AIFM's behalf. Investors must rely on the judgment of the AIFM in making investment and divestment decisions. The members of the AIFM are not required to devote substantially all of their business time to the Fund's and the Compartment's business. Accordingly, potential investors should not invest unless such investors are willing to entrust all aspects of the operation and management of the Fund to the Board of directors and the AIFM.