

# Theta Multistar Fund

Amsterdam

Information Memorandum

August 1, 2010



## **IMPORTANT NOTICE**

**All capitalized words in this Information Memorandum are defined in article 1 of the Terms and Conditions (See: Annex II) or otherwise in this Information Memorandum.**

**Prospective Participants should read this Information Memorandum carefully before deciding whether to purchase a Participation in the Theta Multistar Fund (the “Fund”) and should pay particular attention to the information set forth under the heading ‘Risk Factors and Conflicts of Interest’.**

**There is not and will not be any public market for the Participations. The Participations are subject to restrictions on transfer and resale and may not be transferred or resold except as permitted under the Information Memorandum. The Participations are subject to investment risks, including the possible loss of the entire amount invested. Participants should be aware that Redemption of all or part of their investment may be deferred under certain circumstances.**

**The risks inherent in investment in the Fund are different and can be greater than those typically encountered in investing in collective investment vehicles through participations therein that are traded or listed on a stock market or exchange. An investment in the Fund is only suitable for experienced investors who appreciate the risks involved, which include the loss of their entire investment. Investment is not suitable for investors who may wish to realize their investment at short notice.**

**Any representation or information not contained herein must not be relied upon as having been authorised by the Fund since no person has been authorised to make any such representation or to provide any such information.**

**Prospective Participants should not construe the contents of this Information Memorandum as investment-, legal-, tax-, accounting- or other advice. In making an investment decision, Participants must rely on their own examination of the Fund, including the merits and risks involved, and on their own representatives, including, but not limited to, their own investment adviser, legal counsel, tax counsel and accountants.**

**This Information Memorandum should be read in conjunction with the latest (semi-)annual report of the Fund, as applicable, which shall from time to time be deemed to be incorporated herein.**

**This Information Memorandum does not constitute an offer to sell or solicitation of an offer to buy Participations in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The Fund Manager is licensed and subject to supervision in The Netherlands. The Fund is registered for public distribution in The Netherlands only.**

# TABLE OF CONTENTS

**1. KEY INFORMATION**

**2. FUND STRUCTURE**

**3. TERMS AND CONDITIONS**

**4. REPORTS AND INFORMATION**

**5. INVESTMENT STRATEGY AND POLICY**

**6. RISKS AND CONFLICT OF INTERESTS**

**7. PARTICIPATION, SUBSCRIPTIONS AND REDEMPTIONS**

**8. COSTS AND EXPENSES**

**9. VALUATION**

**10. FUND MANAGER**

**11. TAXATION**

**12. MISCELLANEOUS**

## **ANNEXES:**

**I      REGISTRATION DOCUMENT**

**II     TERMS AND CONDITIONS**

# 1 KEY INFORMATION

## **The Fund**

Theta Multistar Fund is a Fund-of-Hedge Funds, investing in portfolios of hedge funds which are selected by the Fund Manager.

Hedge funds are a wide variety of active investment funds, sometimes relatively small and less regulated, which strive for a positive return in all market circumstances, specializing in investment, arbitrage or trade in a great variety of financial markets and using all kinds of financial instruments, sometimes applying leverage and/or selling securities short.

Hedge funds are risk management orientated and typically hedge out all market risks except the ones they deliberately take on for their expected rewards.

By combining a number of complementary hedge funds in a well diversified portfolio, Theta Multistar Fund aims to optimize the return versus a limited level of risk.

## **Structure**

The Fund is a mutual fund under Dutch law (*fonds voor gemene rekening*). The seat of the management company of the Fund, Theta Fund Management B.V., (the “Fund Manager”) is in Amsterdam, The Netherlands. The Fund is semi open-ended and, for tax purposes, closed (*transparant*). The Participations relate to specific Sub-Funds. For each Sub-Fund, a Series with reference to a particular Dealing Day may be issued. Currently the Fund has two Sub-Funds: the Low Volatility Portfolio and the Medium Volatility Portfolio respectively. Only the Medium Volatility Portfolio is open for subscription.

All benefits and burdens, beneficially attached to the ownership of the Fund Estate relating to a Sub-Fund, shall be in favour or for the account of a Participant in such Sub-Fund.

## **Fund Manager**

The Fund Manager is a 100 % subsidiary of Theta Capital Management B.V. (“Theta”), an independent hedge fund investment specialist based in Amsterdam, The Netherlands. Both Theta and the Fund Manager are regulated by the Dutch Financial Markets Authority (“AFM”) (*Autoriteit Financiële Markten*).

## **Investment objective**

The Fund’s investment objective is to generate investment returns well in excess of Euro-Libor in a one- to five-year investment horizon (depending on which Sub-Fund) with target standard deviations of returns. No guarantee is given as to the Fund actually achieving this objective.

## **Investments**

Investments will primarily be made in diversified portfolios (collective investment vehicles), which employ diverse investment styles and strategies. The Sub-Funds differ in their target return and target volatility. The Fund’s investment mandate includes the opportunity to make co-investments alongside the underlying hedge funds and to invest in other private structures.

## **Debt financing**

The Fund Manager may borrow for the account, and at the expense, of a Sub-Fund to finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time shall not exceed 20% of the book value of the Fund Assets. Beyond that, Fund Investments may not be financed with any

funding (including but not limited to debt funding) other than Subscription Prices received by the Custodian.

### **Subscriptions**

Participations shall be in registered form and Participants can enter the Fund on any Dealing Day, at a Subscription Price equal to the Net Asset Value of a Participation in the relevant Sub-Fund on such date, increased by a Subscription Charge of up to 2%. Participations may be issued in an existing or a new Series on each Dealing Day at the discretion of the Fund Manager.

Applications for Participations should be made through the Application Form, which is available on request at the office of the Fund Manager and which should be delivered or mailed to the Administrator.

### **Minimum subscription and Minimum Holding**

The minimum initial subscription amount for each Participant is € 50,000, unless the Fund Manager decides otherwise. A request for a partial Redemption of Participations may at the discretion of the Fund Manager be refused and the holding will be redeemed in its entirety, if, as a result of such partial Redemption, the total Net Asset Value of the Participations retained by the Participant would be less than € 50,000.

### **Redemptions**

Participants may monthly redeem their Participations subject to the following restrictions:

- a Participant needs to give written notice at least 40 calendar days prior to the Dealing Day to the Fund Manager (unless otherwise agreed by the Fund Manager);
- the Redemption of Participations may be suspended by the Fund Manager in the event of, inter alia, market disruption or breakdown of the means of valuing the Fund;
- the Fund is not obliged to redeem more than 10% of the total Participations in a Sub-Fund in issue per month;
- in an event the Fund Manager deems necessary, inter alia, due to a market disruption or the illiquidity of (a part) of the Fund Assets, the Fund Manager may decide to (partly) carry out a redemption request of a Participant in kind through a transfer of an equitable proportion of the Fund Investments and an equitable proportion of the relating Fund Obligations to the redeeming Participant; and
- a Redemption Charge of up to 1% will be deducted from the proceeds of the Participations.

The minimum value of Participations that may be subject of one Redemption request is € 25,000 (unless otherwise agreed by the Fund Manager).

### **Valuations**

The Net Asset Value of a Participation will be calculated in accordance with the Terms and Conditions on each Dealing Day and will be provided by the Administrator.

### **Reporting**

The Fund Manager will make available:

- monthly reports;
- (semi-) annual reports.

**Distribution policy**

All investment gains, paid out dividends or other distributions by underlying hedge fund investments will be reinvested within the Fund. However, the Fund Manager has the option to make distributions to Participants in the relevant Sub-Fund, pro rata to their Participations.

**Fee structure**

The Fund Manager is entitled to a fixed annual Management Fee equal to 1.25% of the Net Asset Value of the Fund, payable quarterly in arrears.

The Fund Manager is also entitled to an Incentive Fee out of each Sub-Fund calculated per Series, on an annual basis. In the case of Medium Volatility Sub-Fund, this Incentive Fee equals a sum of 10% of the amount by which the return of the Fund exceeded the return of 1-month Euribor plus 2 % per annum.

No Incentive Fee is charged when, at the end of the calendar year, the Net Asset Value is below the highest Net Asset Value at year-end of one of the previous three financial years.

**Listing**

Participations are not listed on any stock exchange or traded in any regulated market.

## **Involved parties and addresses**

### **Fund Manager**

Theta Fund Management B.V.  
Johannes Vermeerstraat 9  
1071 DK Amsterdam  
The Netherlands  
Telephone: +31 (0)20 5722733  
Telefax: +31 (0)20 5722744  
E-mail: info@thetacapital.com

### **Investment advisory committee**

R.W.F. van Tets  
G. Freiherr von Richter  
L.H. Wurfbain  
R. van Rappard

### **Custodian**

KAS-Trust Bewaarder Theta Multistar Fund B.V.  
Reference code: 2.4.890  
P.O. Box 24001  
1000 DB Amsterdam  
The Netherlands

### **Administrator**

TMF Fund Administrators B.V.  
Westblaak 89  
P.O. Box 25121  
3001 HC Rotterdam  
The Netherlands

### **Legal and tax counsel**

Greenberg Traurig, LLP  
Strawinskylaan 3127  
The Atrium, 8th Floor  
1077 ZX Amsterdam  
The Netherlands

### **Auditor**

Ernst & Young Accountants  
Wassenaarseweg 80  
2596 CZ The Hague  
The Netherlands

## 2 FUND STRUCTURE

### **The Fund**

The Fund has been organized as a mutual fund under Dutch law (*fonds voor gemene rekening*) and has been established on August 1, 2001. The seat of the Fund is in Amsterdam, The Netherlands. The Fund is open end and, for tax purposes, closed. The Participations issued by the Fund each relate to specific Sub-Funds. The Fund may issue Participations in a Sub-Fund in the form of Series on each particular Dealing Day. The Fund has two Sub-Funds, called the Low Volatility Portfolio and the Medium Volatility Portfolio respectively. Only the Medium Volatility Portfolio is open for subscriptions.

Participations in different Series of the same Sub-Fund relate to the same portfolio of assets and liabilities and differ only in the Incentive Fee and Management Fee potentially to be paid and therefore also have a different Net Asset Value. Each Sub-Fund has its own investment policy and risk profile. Each Sub-Fund has a separate administration, to ensure, inter alia, that all proceeds and costs attributable to a Sub-Fund can be accounted for. The investments in each Sub-Fund are invested separately. An increase or decrease of the value of the portfolio of a Sub-Fund is exclusively for the benefit or expense of the Participants in such Sub-Fund. Although the assets are administrated separately, from a legal point of view the Sub-Funds are part of the Fund.

### **Mutual fund**

As mentioned, the Fund has been organized as a mutual fund under Dutch law (*fonds voor gemene rekening*). Under Dutch law, a mutual fund may be considered a contract *sui generis*. The management and custody of the assets of the Fund are governed by the Terms and Conditions. The Terms and Conditions provide that the Terms and Conditions and the arrangements made in connection thereto do not establish a partnership (*maatschap* or *vennootschap onder firma*) or limited partnership (*commanditaire vennootschap*). Dutch case law and scholars, however, have regularly deemed mutual funds to be partnerships (*maatschappen*). Whether a mutual fund is deemed a partnership (*maatschap*) or not is of particular importance for the applicability of the legal – statutory - provisions concerning partnerships (*maatschappen*). One of the most important provisions concerns the pro rata shared liability of the partners in a partnership for obligations assumed in the name of the partnership. In case the Fund and/or the Sub-Funds are deemed to be (separate) partnership(s), it is not certain whether what has been specified under Articles 3.2 and 6.4 of the Terms and Conditions can be invoked against third parties. In view of the investment policy of the Sub-Funds it is not foreseeable that, in practice, a situation will occur in which the Participants are liable for more than the Subscription Price. A Participant's obligation to pay a consideration for an interest in the Fund is a capital obligation (*verbintenis*) to the Fund Manager and the Custodian only. This capital obligation is not a contribution (*inbreng*) or obligation to make a contribution within the meaning of (the bill concerning) title 7.13 of the Dutch Civil Code (*Wetsvoorstel 28 746*).

### **Fund management**

The Fund is managed by the Fund Manager, a private limited-liability company under Dutch law with its statutory seat in Amsterdam, The Netherlands. The Fund Manager outsources certain operational aspects of the management to Theta Capital Management B.V. These operational aspects concern the selection of investments, portfolio constructions and risk management. Beside the Fund, the Fund Manager, also manages Theta Deep value and the Theta Legends Fund.

## **Custodian**

KAS-Trust Bewaarder Theta Multistar Fund B.V., which is a wholly owned subsidiary of KAS BANK N.V., acts as custodian (the “Custodian”) of the Fund Assets.

The Custodian shall only be liable towards the Fund and the Participants for losses suffered by them to the extent that the losses result from culpable non-performance (*verwijtbare niet-nakoming*) or defective performance (*gebrekkige nakoming*) of its obligations, also in case the Custodian delegated the custody of Fund Assets in whole or partly to a third party.

## **Management and custody agreement**

The terms and conditions of the agreement between the Fund Manager and the Custodian concerning the management and custody are laid down in the Terms and Conditions included herein as Annex II.

## **Administrator**

The Fund Manager has delegated the general administration for the Fund to TMF Fund Administrators B.V.–as third party administrator (the “Administrator”). The general administration includes establishing and maintaining of bank accounts and other accounts, processing the issuance and redemption of Participations, maintaining all appropriate investor registers and ledgers, distributing annual and certain other reports to the Participants, preparing and maintaining financial and accounting books and records and maintaining the Fund’s principal administrative records.

## **Investment advisory committee**

The Fund Manager has appointed an investment advisory committee. The members of the committee render investment advice and meet regularly to discuss the investments of the Fund.

## 3 GOVERNANCE

### **Terms and Conditions**

Below are some provisions of the Terms and Conditions as included in Annex II, including the rights and duties of the Participants.

### **Amendment of Terms and Conditions**

#### Joint proposal Fund Manager and Custodian

The Terms and Conditions may be amended at the joint proposal of the Fund Manager and the Custodian, without any further consent of the Participants being required, provided the amendment does not involve:

- i. a change in the Investment Objectives;
- ii. an increase of the fees of the Fund Manager; or
- iii. any negative change in the Terms and Conditions relating to the Redemption of Participations which require the prior consent of the Participants through an Ordinary Resolution.

The Terms and Conditions cannot be amended at the request of the Participants.

#### Notice of (proposed) amendment

The Fund Manager will inform the Participants of the text of a (proposed) amendment of the Terms and Conditions at least thirty (30) calendar days before the day on which the amendment shall come into effect. Such notice and an explanation thereto is also published on the website of the Fund Manager. In the case of an approval by Participants, notice thereof will be sent to all Participants, and will be published, along with an explanation of the amendment, on the website of the Fund Manager.

#### Conditions for amendments taking effect

Furthermore, any change in the Terms and Conditions which causes a reduction in the Participants' rights or security or imposes costs upon Participants or involves a change in the Investment Objectives, does not become effective until three (3) months after the date (of approval) of the change and during this period Participants shall be entitled to redeem their Participations under the then existing conditions. In particular, the provisions on Redemption, as referred to in article 14 of the Terms and Conditions shall apply to any such Redemption.

### **Termination and winding up**

#### General conditions for termination

Although the Fund has an indefinite duration, it shall be terminated on the bankruptcy, dissolution or liquidation of the Fund Manager unless the appointment of a replacement Fund Manager is approved by an Ordinary Resolution.

#### Termination on sanction of Special Resolution

The Fund may also be terminated at any time with the sanction of a Special Resolution, upon the Fund Manager committing fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or material breach of these Terms and Conditions which is not remedied within a reasonable period of time. Furthermore, it may be terminated with the consent of the Fund Manager and the sanction of a Special Resolution, or on not less than a three month's Notice by the Fund Manager to the Participants.

#### Termination on sanction of Ordinary Resolution

The Fund Manager may also (with the consent of an Ordinary Resolution) by notice in writing to the Participants, terminate the Fund at any time if in its reasonable opinion it would be impracticable, unlawful or inadvisable to continue.

#### Winding-up

Upon termination or dissolution of the Fund or a Sub-Fund, no further business shall be conducted for the Fund or that Sub-Fund (as the case may be), except for such actions as shall be necessary for the winding up of the affairs of the Fund or that Sub-Fund and the distribution of the Fund Assets which shall be effected by the Fund Manager.

#### Terms and Conditions

During the liquidation period the Terms and Conditions shall, to the extent possible, remain in full force and effect. The balance left after the liquidation shall be distributed in accordance with the provisions specified in the Terms and Conditions. Notice that distributions are to be made payable to the Participants and the composition of the distributions or collections shall be given in accordance with the provisions as specified by Article 16 Terms and Conditions. The Fund Manager shall duly render accounts to the Participants before making any distributions.

#### Auditor's certificate

The Fund Manager shall prepare liquidation accounts, which shall be accompanied by a certificate of an auditor. Approval of those liquidation accounts by a meeting of Participants shall constitute, upon approval by Special Resolution, a discharge of the Custodian and the Fund Manager.

### **Meeting of Participants**

#### Meeting of Participants

The Fund Manager may, as often as it deems necessary in the interest of the Participants, convene a meeting of all Participants or of the Participants in one or more Sub-Funds. The meetings will be held in Amsterdam or another place to be determined by the Fund Manager. Notice for a meeting will be given in accordance with Article 16 of the Terms and Conditions at least fourteen (14) days prior to the meeting and will state the date, time, place and agenda for the meeting.

#### Notification for attending

Participants wishing to attend a meeting must notify the Fund Manager thereof in writing no later than five (5) Business Days prior to the meeting. Participants, which have so notified the Fund Manager, are entitled to be heard at the meeting and to exercise their voting rights.

#### Procedure at meetings

The Fund Manager shall appoint a chairman and a secretary for each meeting. The chairman shall be responsible for determining the procedure to be adopted for the conduct of any meeting Participants. The secretary shall be responsible for the preparation of minutes of the meeting.

#### Voting rights

Each Participation entitles to one vote in a meeting of Participants. The voting rights of a Participant whose redemption request has been effected under article 14.13 of the Terms and Conditions will be restricted to issues relating to the Fund Assets he is still entitled to.

## 4 REPORTING AND INFORMATION

### **Financial year**

The financial year of the Fund coincides with the calendar year.

### **Periodical reports**

The Fund Manager will prepare monthly, semi-annual, and annual written reports on the Fund's portfolio. The reporting currency is the Euro. The annual- and semi-annual reports are available free of charge for the Participants at the Fund Manager's office and on its website:

[www.thetacapital.com](http://www.thetacapital.com).

### **Monthly report**

As soon as reasonably practicable following a Dealing Day, the Fund Manager will prepare a (non-audited) report, signed by the Custodian, containing the following information:

- the total value of the Fund's assets;
- an overview of the composition of the Fund's assets;
- the number of issued Participations; and
- a provisional Net Asset Value attributable to one Participation in each Series as of such Dealing Day;
- the definitive Net Asset Value attributable to one Participation in each Sub-Fund as of the Dealing Day in the previous month; and
- details of the performance of the Sub-Fund over the previous month, over the year to date and since the Commencement Date.

Upon request, a Participant shall be sent, the monthly report to the Participant's (electronic) address.

### **(Semi-) annual reports**

The (semi-)annual reports of the Fund will include the information required pursuant to the Act on Financial Supervision (*Wet op het financieel toezicht*) (the "Wft").

The semi-annual report of the Fund is available within 9 weeks of the end of the first half of the year. This non audited report contains in any case the semi-annual financial statements.

The annual report will be audited and prepared within 4 months after the end of each financial year. The annual report includes for each Sub-Fund:

- balance sheet;
- income statement;
- explanatory notes;
- statement of the investments acquired, sold or otherwise disposed of during the financial year and a report by the Fund Manager expressing its opinion on the value of the investments held at the end of the financial year; and
- a specification of the composition of each Sub-Fund by investments in percentages of that portfolio for all investments which represent more than 2 % of the value of that Sub-Fund.

### **License and Terms and Conditions**

The License granted by the AFM to the Fund Manager and the Terms and Conditions may be inspected at the office of the Fund Manager and are made available on the website of the Fund Manager. At request, any person shall be provided with a free copy of the Terms and Conditions. At their request, Participants shall be provided, against at a maximum the cost price, a copy of the License and a copy of exemptions from the provisions of the Wft, granted by the AFM in relation to the Fund, the Fund Manager, or the Custodian.

### **Trade Register**

Upon request, any person shall be provided, against at a maximum the cost price, the information concerning the Fund Manager and the Custodian which on a mandatory basis needs to be included in the Trade Register (*Handelsregister*).

### **Notice of distributions**

The announcement of payment of distributions, if any, shall be sent to the (electronic) addresses of Participants and published on the website of the Fund Manager.

The announcement of a payment of distributions, if any, the composition of the distributions and the way the distributions will be paid, shall be sent to the (electronic) addresses of the Participants and published on the website of the Fund Manager.

## 5 INVESTMENT STRATEGY AND POLICY

### **Key objectives and investment strategy**

#### Introduction

The Fund provides individuals and institutional investors with an investment vehicle through which they can participate in two separate Sub-Funds. Each of the Sub-Funds aims to achieve consistent absolute returns on investment irrespective of the direction of financial markets, i.e. to have minimal correlation to general market risks. The Fund will attempt to accomplish this objective primarily by investing in a diversified portfolio of hedge funds, which employ diverse investment styles and strategies. The Sub-Funds differ in their target return and target volatility.

#### Objectives

The Fund aims to invest in hedge funds of which the returns have low correlation with traditional asset classes. As with publicly traded securities, risk control benefits can be achieved when a hedge fund portfolio is diversified by a number of funds and by underlying strategies, since different classes of hedge funds also have different risk-return characteristics.

#### Hedge funds

The Fund invests aims to invest primarily in hedge funds established in on- and offshore financial centres, but will retain the flexibility to invest in funds established in other developing hedge fund markets if suitable opportunities arise. The Fund intends, in principle, to invest in funds established by hedge fund managers with strong backgrounds and consistent track records.

#### Restrictions

The number of hedge funds in which the Fund participates depends on the opportunities available and the optimal level of diversification, but each portfolio will normally contain more than 20 hedge funds. No single investment in a hedge fund will represent 12% or more of the Fund's capital relating to the relevant Sub-Fund at the date it is made. The Fund's investment in any hedge fund will be less than 20% of the total capital of such hedge fund.

#### Debt financing

The Fund Manager (or the Custodian at the direction of the Fund Manager) may borrow for the account, and at the expense, of the Fund to finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time shall not exceed 20% of the book value of the Fund Assets. Beyond that, Fund Investments may not be financed with any funding (including but not limited to debt funding) other than Subscription Prices received by the Custodian.

### **Investment process**

In its investment process, the Fund Manager takes a predominantly bottom-up approach reflecting its profound belief that hedge fund managers are well equipped to capitalize on varying market conditions. In other words, the Fund Manager does not actively manage its portfolios according to pre-formulated return expectations for the different hedge fund investment strategies. Rather, the Fund Manager strives to select hedge fund managers that have proven the ability to successfully exploit investment opportunities across various market environments and aims to compose portfolios of hedge funds with fundamentally different risk-return profiles to maximize the benefit of diversification. This approach endeavors to provide the Participants with capital appreciation and downside protection, at all times.

## **Manager selection and due diligence**

The objective of the Fund Manager's manager selection process is to identify hedge fund managers with superior investment skills that have proven to operate successfully through different market environments. The selection process entails three levels of analysis, each with its own information requirements, documents and criteria. The selection process is supported by several databases, a qualitative information system and various tools (some proprietary) for quantitative fund analysis and stress-testing.

In the *qualitative* due diligence process the Fund Manager focuses on:

- independent mind, potential to generate uncorrelated returns, flexibility of investment approach
- competitive edge in investment strategy, trading style
- investment process
- risk management
- background and experience.

The objective of performing *quantitative* analysis of a hedge fund track record is twofold: risk analysis and relative return analysis. To allow for the dynamism inherent in a fund's investment strategy, quantitative techniques cannot be used in a strict and rigid manner, but have to be applied with common sense and complemented with expert judgment.

The objective of the Fund Manager's *operational* due diligence process is to provide a transparent overview of the infrastructure supporting the trading strategy regarding:

- people & organization
- processes & systems
- involvement of third party service providers

Crucial elements in the operational risk assessment are reference checks, evaluation of portfolio marking-to-market and Net Asset Value calculations, administrators, prime brokers.

Managers in which the Fund is invested are monitored and analyzed on an ongoing basis using the same levels of analyses applied in the initial selection.

## **Sub-Fund construction and risk management**

In its portfolio construction, the Fund Manager is driven by the notion that it can only set the level of portfolio risk, and the market will dictate returns. The Fund Manager does not apply top-down (tactical) allocation based on relative return expectations across the various hedge fund strategies. Rather, the Fund Manager takes a true bottom-up approach where risk parameters on the portfolio level determine the allocation across individual hedge funds. Allocation limits to certain strategies, managers and market risks are applied to control concentration risk. This approach to portfolio construction complements the hedge fund selection process, where the Fund Manager strives to select hedge funds that are able to produce positive returns under all market environments. The process embodies an optimization of the portfolio in which the Fund Manager aims to minimize concentration risk by focusing on cross-correlations between hedge funds and strategies. The Fund Manager believes this disciplined, quantitative approach enables it to engineer risk-return profiles that match the participants' needs and preferences.

## **Sub-Funds**

The Sub-Fund open for subscriptions is the Medium Volatility Portfolio:

Target Return : in excess of 1-Month Euribor + 5 %  
Target Volatility : 5-7 %. as measured by annualized standard deviation

This Sub-Fund will consist of hedge funds that use a wide range of absolute return strategies, including, among others, long/short equity, emerging markets, global macro and managed futures (see “Investment styles” and “Strategy descriptions”).

The efforts of the Fund Manager are aimed at actually achieving the Target Returns and the Target Volatilities. There is no guarantee, however, that such Target Returns and/ or Target Volatilities shall actually be achieved.

### **Achievement of Returns**

The success of the Fund depends on the ability of the Fund Manager to identify appropriate hedge funds and on the ability of the managers of those funds to identify, develop, and realise profitable investments. There is no guarantee that the Fund’s investments will be successful or that the target rates of return will be achieved and investment results may vary substantially over time and from period to period.

### **Investment styles**

Within the hedge funds in which the Fund may invest, absolute return investing encompasses a wide variety of investment styles including but not limited to: hedging and arbitrage techniques in the equity, fixed income, currency and commodity markets; index arbitrage; interest rate arbitrage; convertible bond and warrant hedging; merger arbitrage; statistical long/short equity strategies; pairs trading and investment in private placements. These sophisticated strategies often require the use of derivative trading vehicles such as stock options, index options, futures contracts, and options on futures.

### **Strategy descriptions**

There is a number of basic strategies that hedge fund managers may employ, with different risk/return characteristics. The broad categories are defined below. Please note that there are no industry- or scientific uniform definitions. Some categories may have overlap with others or have subcategories. Please also note that the Sub-Funds may invest in some but not necessarily all of the categories that are outlined below and that they may invest in funds which do not belong to one of these categories.

#### Fixed income arbitrage

The fixed income arbitrageur attempts to profit from price anomalies between related interest rate instruments. These price anomalies can, for example, be driven by government intervention on the financial markets. Genuine fixed income arbitrageurs typically aim to deliver steady returns with low volatility. This strategy for example includes the arbitrage between physical fixed income securities and futures. As the spreads generated are usually relatively small, generally leverage is employed.

#### Convertible bond arbitrage

This strategy implies hedged investing in the convertible securities of a company. A typical investment position is to be long in the convertible and short in the common stock of the company issuing the convertible.

### Market neutral (relative value)

The investment strategy is designed to exploit market inefficiencies between related equities, fixed interest securities, and derivatives. This strategy usually involves having simultaneously long and short matched equity portfolios of the same size within a country. Market neutral portfolios are designed to be either Beta or currency neutral or both. This strategy tends to have a low correlation with movements in equity and fixed income markets. Well-designed portfolios typically have limited industry-, sector-, market capitalization- and other exposures. Leverage is often used to enhance returns.

### Long/short equity

This directional strategy involves equity oriented investing, on both the long and short side of the market. The objective is not to be market neutral. Most of the hedge fund managers who use this directional strategy claim to be seeking absolute returns, although due to the partial or opportunistic nature of the hedging strategies, such managers often do have significant market exposure. The group of hedge fund managers employing this strategy can be subdivided between long-biased managers, short-biased managers, long/short variable managers and no-bias (or roughly market neutral) managers.

In this directional strategy, the hedge fund manager has the ability to shift from value to growth, to shift between small, medium, and large capitalization stocks, and to shift from a net long position to a net short position. The strategy may hedge with options and futures. The focus may be regional, such as long/short US equity; long/short European equity; or sector specific such as long/short technology stocks, long/short financial stocks, and long/short healthcare stocks. Long/short equity funds tend to construct and hold portfolios that are significantly more concentrated than traditional fund managers are. Leverage and the use of derivatives are also common features of this strategy.

### Equity trading

Equity trading, also called momentum investing, is one of the fastest growing categories of the hedge fund industry. Originally, hedge fund managers used to buy small growth companies, which they kept buying as long as sales and earnings were meeting growth targets, not being concerned with valuations. Today, some equity traders use purely technical signals like relative strength and price momentum, while others have approaches that are more eclectic.

### Global macro

This strategy employs top-down macro research to take advantage of expected market movements by taking both long and short positions at the same time in any of the world's major capital or derivative markets. These positions reflect managers' views on overall market direction as influenced by major economic trends and/or events. Global macro funds can invest in equities, bonds, currencies and derivatives and tend to be highly opportunistic (risky) and have a high degree of leverage.

### Event-driven

This strategy aims to capture price movement generated by an anticipated corporate event or capital markets transaction. The event driven category, for example, includes risk (or merger, acquisition) arbitrage and distressed securities or high yield investing. In case of merger arbitrage, a hedge fund manager will typically take a long position in the company being acquired and a short position in the acquirer. The hedge fund manager seeks to capture the price differential between the stock of the target and the stock of the acquirer. The principal factor is deal risk rather than market risk. These types of funds generally do not rely on market direction. Qualitative fundamental research, including the in-depth study of long legal documents, relevant transaction experience and risk management disciplines are the keys to success in this strategy.

### Short selling

Short selling generally involves hedge fund managers taking short only positions in overvalued securities, by either selling borrowed stock, or using derivatives.

### Emerging markets

This strategy involves equity or fixed income investing focusing on emerging markets around the world.

### Managed futures

The fund managers employing this strategy trade in the listed financial and commodity futures markets around the world, more often than not using a computer model that generates the buying and selling decisions. There are different systems to generate buy and sell signals: systematic or discretionary. Some traders rely on model-based systems (systematic traders). These models are generally based exclusively on technical indicators. The underlying rationale for systematic trading is that, while fundamental value creates long-term trends, investor psychology is a more important factor in driving shorter-term markets, and that investors follow recognizable patterns of behaviour. Other traders use a more subjective approach (discretionary traders), ultimately relying on their own judgement. Discretionary traders often combine fundamental, economic, and technical analysis to generate trading decisions.

### **Distribution policy**

The Fund Manager shall have sole discretion whether to distribute any income of the Fund or whether to retain it within the Fund. All investment gains, paid out dividends or other distributions by underlying hedge fund investments will be reinvested within the Fund. However, the Fund Manager has the option to make distributions to Participants in the relevant portfolio, pro rata to their Participations.

## 6 RISKS AND CONFLICTS OF INTERESTS

*The value of the investment can fluctuate and investors may receive less than what they have invested.*

### **Introduction**

This Chapter describes each specific risk Participants may run with the investment, to the extent that such risk is significant and relevant in view of its consequences and probability. If applicable, the description pays attention to factors that may have an impact on the Fund and hence on the risk for Participants.

### **Risks**

#### **General**

Investment in the Fund is speculative and entails significant risks. The environment for hedge fund investments is increasingly competitive and an investor should only invest in the Fund if the investor can withstand a total loss of its investment. No guarantee or representation is given that the Fund will achieve its investment objectives. The Fund expects that certain investments made by hedge funds may experience financial difficulties, which may never be overcome. Hedge funds may utilize highly speculative investment techniques, including but not limited to leverage and highly concentrated portfolios.

#### **Management of hedge funds**

The Fund and the Participants do not have the ability to direct the management of hedge funds or their underlying portfolio investments. As a result, the returns of the Fund primarily depend on the performance of independent fund managers and could suffer substantial adverse effects by the unfavourable performance of such fund managers. The vast majority of the hedge funds the Fund invests in are not under the regulatory supervision of the AFM.

There are no assurances that the Fund will be able to invest its capital fully, or that sufficient suitable investment opportunities will be identified at all times. For example, because of market fluctuations, investment concentration may occur. If the Fund receives distributions in kind from any investment, it may incur additional costs and risks to dispose of such assets.

#### **Illiquidity of Sub-Fund**

The Redemption of Participations may be limited to 10% of the Participations in issue on any Dealing Day in any Sub-Fund and the right to redeem may be suspended in the event of market disruption or a breakdown in the means employed to value the assets of the Fund. The Fund's interests in hedge funds and the investments made by those funds may be difficult to realise in certain circumstances and such interests and investments may be subject to restrictions on transfer. As some of the underlying hedge funds in any Sub-Fund may offer only limited Redemption opportunities, this may affect the means available to meet the Redemption of Participations in a particular Sub-Fund.

In the case of, inter alia, a market disruption, increased counter party risk, a suspension of the Fund's rights to redeem units in hedge funds in which the Fund invests or another cause of illiquidity of or increased risks related to the Fund Assets, the Fund Manager may if it deems such in the interest of the Participants decide to create a Side Pocket under article 7.4 of the Terms and Conditions or carry out a redemption request under article 14.13 of the Terms and Conditions (Redemption in kind).

**Valuation risk**

To the extent that the investments of underlying hedge funds may be difficult to realise under certain circumstances and to the extent that the investments of underlying hedge funds may be subject to restrictions on transfer, the sale of any investments may sometimes be possible only at substantial discounts. Further, such investments may be extremely difficult to value. It should be noted that in preparing the monthly, semi-annual, and annual reports, the Fund Manager is dependent on the underlying hedge fund managers and their administrators, both in respect of timing and in respect of the contents of the reports. Provisional valuations may sometimes have to be applied. The underlying hedge funds of the Fund may engage in privately placed less-liquid investment for which no proper valuation may exist until a transaction is executed.

**Concentration risk**

The Fund may have significant exposure to a limited number of hedge funds that, in turn, may have significant exposure to a limited number of positions. Consequently, the value of the fund may display a high sensitivity to adverse developments in any particular hedge fund.

**Lack of transferability of Participations**

There will not be any public market for the Participations, nor is a Participation transferable. Redemption of Participations may not be exercisable under certain circumstances. Investment in the Fund should therefore only be considered by persons financially able to maintain their investment for an extended period of time and who can afford a loss of all or a substantial part of their investment.

**Segregation of Sub-Funds / Risk of contagion**

Although it is intended to segregate the assets and liabilities relating to each Sub-Fund and although it is unlikely that investments will be acquired where the liability relating to a respective Sub-Fund is more than the amount invested (the documentation of any potential hedge fund investments will be reviewed in that respect), there can be no guarantee that, whether or not as a result of third party actions, losses will not be suffered by one Sub-Fund, which are properly referable to another Sub-Fund (the Fund Manager cannot oversee the impact of potential changes in (the interpretation of) any applicable laws or regulations on the liabilities for the Fund relating to its hedge fund investments).

**Various legal forms of hedge funds**

The hedge funds in which the Fund invests may be organised in various legal forms, including but not limited to, partnerships, companies, and managed accounts. These differences in legal forms may have differing impacts on the liabilities the Fund may incur in relation to investment in these hedge funds.

**Foreign exchange risk**

Many of the underlying hedge funds may be exposed to foreign exchange risk and are determined in other currency than Euro. The Fund actively manages the foreign currency risk of holding shares of hedge funds not denominated in Euro, meaning that the Fund Manager may deploy its own strategy and view when managing the risk.

**Debt financing**

The Fund Manager (or the Custodian at the direction of the Fund Manager) may borrow for the account, and at the expense, of the Fund, to finance Fund Assets, Fund Obligations, and Costs. The sum outstanding at any time shall not exceed 20% of the book value of the Fund Assets. This leverage may, under certain circumstances, negatively affect the Net Asset Value of the Fund.

**Market collapse**

Although hedge funds generally aim for a market neutral investment, global market collapse will affect the Fund.

**Default of counterparty or issuing institution**

Part of the general investment risk includes default of the counterparty of the Investee Funds and/ or default of the issuing institution in whose securities the Investee Funds invest.

**Default in settlement and clearing system**

Participants may run the risk that clearing and settlement of transactions undertaken for the Fund does not occur as expected, since payment or delivery of the financial instruments by a counterparty does not occur or not in time or as expected.

**Conflicts of interests****Incentive fee compensation**

The Fund Manager will receive incentive compensation from the Fund (please refer to article 11 of the Terms and Conditions). Managers of the underlying hedge funds are likely to receive incentive compensation from those funds as well. As a result, the fee structure imposed by the Fund is higher than if a Participant directly invested in the underlying hedge fund. Moreover, such a compensation arrangement may create an incentive for the Fund Manager or the fund managers of the hedge funds to make investments that are riskier or more speculative than would be the case if such an arrangement were not in effect.

**Diverse Participants**

Participants in the Fund include persons or entities organized in various jurisdictions and subject to various tax regimes. As a result, conflicts of interest may arise in connection with decisions made by the Fund Manager that may be more beneficial for one type of Investor than for another type of Investor. In selecting investments appropriate for any Sub-Fund, the Fund Manager will consider the investment objectives of that Sub-Fund as a whole, not the investment objectives of any Participant individually.

**Activities**

In the ordinary course of business, the Fund Manager and its affiliates are engaged or may be engaged in the management and the advisory of other funds or portfolios of hedge funds, where their interests or the interests of their clients may conflict with the interests of the Fund's Participants. Conflicts of interest may also arise if the Fund Manager and / or its affiliates become subject to any merger or acquisition. The Fund Manager and its affiliates will, on a best efforts basis, attempt to serve the Participants' interests to the best possible extent should a conflict of interest arise.

By acquiring Participations, each investor will be deemed to have acknowledged the existence of such actual and potential conflicts of interest and to have waived any claim with respect to any liability arising from the existence of any such conflict.

**Other investment funds and proprietary trading**

The Fund Manager or its affiliates are, or may in the future be, the fund manager or investment adviser of other private investment funds or pooled investment vehicles of other clients that may have similar objectives to the Fund. Neither the Fund Manager nor its affiliates are under any obligation to share any investment opportunity, idea, or strategy with the Fund, and may compete with the Fund for appropriate investment opportunities.

**Affiliated persons**

The Fund may invest in funds or companies affiliated to the Fund Manager or the Custodian.

**The investment advisory committee; other activities**

The members of the investment advisory committee are not involved full-time with the investment advisory committee and undertake other activities because of which the interests of the Fund could conflict with the interests related to such other activities.

## 7 PARTICIPATIONS, SUBSCRIPTION, AND REDEMPTION

### **Participations**

#### Rights and duties

The rights and duties of a Participant connected to a Participation are described in detail in article 9 of the Terms and Conditions.

#### Pro rata entitlement

Each Participant shall be beneficially entitled to the Fund Estate of a Sub-Fund pro rata to the number of its Participations in that Sub-Fund. All benefits and (subject to Article 6.4 of the Terms and Conditions) burdens, beneficially attached to the ownership of the Fund Estate, shall be in favour and for the account of each Participant pro rata to the number of its Participations in that Sub-Fund.

#### Form

Participations shall be in registered form only. Certificates shall not be issued.

#### Transferability

No assignment, sale, transfer, or other disposition of a Participation (whether voluntary or involuntary) shall be valid or effective. Participations cannot be made subject to any pledge, mortgage, usufruct, charge, lien, retention or other encumbrance (*beperkt recht*) of any nature whatsoever.

#### Voting rights

Each Participation gives an entitlement to one vote in a meeting of Participants of the Fund or in a meeting of Participants of a Sub-Fund, provided, in the latter case, the Participation relates to such Sub-Fund.

#### No management participation by the Participants

Participants will have no right or power to participate in the management or control of the Fund and thus must depend solely on the ability of the Fund Manager with respect to making investments. In addition, Participants will not have an opportunity to evaluate the specific investments made by the Fund or the terms of any investment made by the Fund.

### **Listing**

The Participations are not listed on any stock exchange nor traded in any regulated market.

### **Subscription**

#### Minimum Subscription Price

The minimum Subscription Price per Participant is € 50,000 unless the Fund Manager decides otherwise.

#### Subscription procedure

To participate in the Fund, a Participant must:

- complete and execute an Application to Participate, as made available by the Fund Manager or the Administrator;
- deliver or mail this form to the Administrator at least 10 Business Days before the Dealing Day on which the Participant wants to enter the Fund; and
- transfer the total Subscription Price to the Fund Bank Account, specifying the desired

Sub-Fund, at least 10 Business Days before the Dealing Day on which the Participant wants to enter the Fund. Should the Subscription Price not be paid-in on the Fund Bank Account in Euro, the relevant currency will be converted into Euro at the expense of the Participant.

Subject to conditions set out in the Subscription Procedure, the Fund Manager reserves the right to accept or reject any applications in its sole discretion. Prerequisite for acceptance of applications is provision by the potential investor of information, inter alia, relating to its antecedents, to enable the bank maintaining the Fund Bank Account to comply with Dutch anti money-laundering regulations. The Fund Manager endeavours to provide deal confirmations to Participants within 12 Business Days after the Dealing Day.

### **Series**

The Fund may issue Participations in a Sub-Fund in the form of Series on each particular Dealing Day. Participations in different Series of the same Sub-Fund relate to the same portfolio of assets and liabilities and differ only in the Net Asset Value, the Incentive Fee and Management Fee potentially to be paid and the remaining lock-up period. After the end of the first financial year following the expiration of the lock-up period of a particular Serie, the Series may be converted into one Series of the same Sub-Fund.

The Fund Manager may, where it deems practical convert, at any Dealing Day all the participations of any Series into any other Series of the same Sub-Fund.

### **Minimum Holding**

A request for a partial Redemption may at the discretion of the Fund Manager be refused and the holding will be redeemed in its entirety, if, as a result of such partial Redemption, the total Net Asset Value of the Participations retained by the Participant would be less than € 50,000.

### **Redemption**

#### Minimum Redemption and redemption charge

Redemption is subject to a redemption charge of up to 1% of the Net Asset Value of the relevant Participation at the Dealing Day, determined by and payable to the Fund Manager. The redemption charge will partially be used for administrative expenses with respect to the Redemption. The Fund is not obliged to redeem more than 10% of the total Participations in a Sub-Fund in issue on any Dealing Day. Any excess requests will be carried forward to the next following Dealing Day at which time they will be given priority over subsequent requests for Redemption. The minimum Net Asset Value to be redeemed subject to one redemption request equals € 25,000.

#### Redemption procedure

Each month Participants have the possibility to redeem Participations. The Redemption may be suspended by the Fund Manager in the event of, inter alia, market disruption or breakdown of the means of valuing the Fund. The Redemption can be exercised on any Dealing Day following at least 40 calendar days prior written notice given to the Fund Manager unless otherwise agreed with the Fund Manager.

The Fund Manager endeavours to provide deal confirmations to Participants within 12 Business Days after the Dealing Day and to distribute redemption proceeds to Participants within 30 Business Days after the Dealing Day.

Issue and Redemption of Participations may be suspended by the Fund Manager in the event of, *inter alia*, market disruption or breakdown of means of valuing the Fund.

### **Illiquidity of the Fund Assets**

In the event of, *inter alia*, a market disruption, increased counter party risk, restrictions on the redemption of the Fund Assets or another cause of illiquidity of or risks related to the Fund Assets (“Circumstances”), the Fund Manager may decide to: i) create Side Pockets under article 7.4 of the Terms and Conditions; or ii) carry out redemption request in kind under article 14.13 of the Terms and Conditions as will be explained in more detail hereafter.

#### Redemption in kind

Article 14.13 of the Terms and Conditions allows the Fund Manager to (partly) carry out a redemption request of a Participant by the transfer of an equitable proportion of certain Fund Investments and an equitable proportion of the relating Fund Obligations to the Participant that has requested the Fund Manager to redeem his Participation (redemption in kind). If the Fund Manager decides to (partly) to redeem in kind all redemption requests of the month concerned will be carried out in this manner pursuant to which the redeeming Participants will each receive the same percentage in cash and (same) assets in kind.

The Custodian will separate the Fund Assets and Obligations that are subject to a redemption in kind from the other Fund Assets.

As soon as the Fund Manager is able to convert the relevant Fund Assets allocated to the Participants into cash, the Fund Manager will distribute the cash to the relevant Participant. The Participant is redeemed in kind will have access to the meeting of Participants. However his voting rights will be restricted to issues relating to the Fund Assets and Obligations he is still entitled to.

The costs of management of the Fund Assets relating to a redemption in kind will be paid out of the Fund Assets to be liquidated by the Fund Manager,

The Fund Manager will not publish the Net Asset Value of Fund Assets redeemed in kind according to article 14.13 of the Terms and Conditions.

#### Side Pockets

The Fund Manager may decide to create a Side-Pocket. The Participants of the relevant Sub-Fund participating at the creation of the Side-Pocket will receive a Participation B entitling the Participant to a pro rata share in the Side-Pocket Assets. The existing Participations (renamed Participations A) will entitle the Participant to a pro rata share of the other Fund Assets and Fund Obligations. The sum of the Net Asset Values of the Participations A and B will equal the Net Asset Value of the Participation before the split of the Fund Assets and Obligations. Subsequent Side-Pockets created thereafter will be identified with the letter ‘C’ and following.

Participants subscribing to a Sub-Fund after the creation of a Side-Pocket will only receive Participations A .

Participations in Side Pockets carry the same (voting )rights as the Participations A, except that they may not be redeemed at the option of the Participant. As soon as the Fund Assets in the Side-Pocket regain their liquidity they may be retransferred to the Sub-Fund. Participants who have received Participations in a Side-Pocket and have redeemed Participations A since then will be deemed to also have requested for a pro rata part of their Side-Pocket Participations and will receive a cash distribution on such part of their pro rata Side Pocket Participations as soon as the value of underlying assets can be realized. Participations in a Side-Pocket cannot be redeemed separately.

The Management Fee and the Incentive Fee regarding the Side-Pocket will be calculated on realized Side-Pocket Assets and will not be payable to the Fund Manager until such time. As such, the Fund Manager will only be entitled to a Management Fee on cash generated from the realization of Side-Pocket Assets.

The Net Asset Value of the Side-Pocket Assets will be calculated in accordance with the Terms and Conditions on each Dealing Day and will be provided by the Administrator. Without prejudice to the above the Terms and Conditions applicable to the Participants will also apply to the Participants in the Side-Pocket.

### **Subscription price and redemption price**

Participants can enter the Fund on a (monthly) Dealing Day, at a Subscription Price equal to €1,000, or at Net Asset Value where it regards an existing Series, in the relevant Sub-Fund on such date, increased by a Subscription Charge of up to 2%.

Redemptions shall be effected at a price equal to the Net Asset Value of the relevant Participations on the Dealing Day on which Redemption is effected, less a redemption charge not exceeding 1% of the redemption proceeds.

#### Assessment and publication of Net Asset Value

As of each Dealing Day, the Fund Manager shall determine the Net Asset Value, in accordance with article 12 of the Terms and Conditions. The Net Asset Value shall be expressed in Euro or, in the case of Sub-Funds valued in another currency, in such currency as may have been designated by the Fund Manager. The Net Asset Value of a Participation will be calculated in accordance with the Terms and Conditions on the Dealing Day and will be provided by the Administrator. The Net Asset Value is published on the website of the Fund Manager.

#### Annual accounts of underlying Investee Funds

The Fund's investments in Investee Funds will be valued based on the reporting received from the administrators of such hedge funds, unless considered inappropriate by the Fund Manager. The value of investments in the Investee Funds will generally be taken as the aggregate of the Fund's attributable share of the latest available net asset value of such hedge funds, where it is the intention to base the Net Asset Value of the Fund on the fair value of the financial assets and liabilities of the Fund. The Fund Manager may, if it thinks fit, make adjustments because of the different bases of valuation applied by the hedge funds, which will be reflected and explained in the accounts.

### **Default / Creditworthiness / Negative tax implications**

It should be noted that, if a Participant fails to fulfil any of its obligations under the Terms and Conditions, the Fund Manager may, in addition to any other rights afforded by law, undertake certain (legal) actions. Pursuant to article 14.2.2 of the Terms and Conditions, if the tax status of the Fund Estate, Custodian, or the other Participants is adversely affected by the tax status of that particular Participant, the Fund Manager is entitled to redeem that Participant's Participations as well.

### **Suspension of dealings**

#### Situations in which dealings may be suspended

The Fund Manager may declare a suspension of valuations and the issue and Redemption of Participations in any Sub-Fund for the whole or any part of a period during which:

- by reason of the closure of or the suspension of trading on any stock exchange or over-the-counter market or any other reason, circumstances exist as a result of which, in the

- opinion of the Fund Manager, it is not reasonably practicable for the Fund to dispose of investments or fairly to determine the Net Asset Value; or
- a breakdown occurs in any of the means normally employed by the Fund Manager in ascertaining the value of investments or any other reason or circumstances exists which in the opinion of the Fund Manager means the value of the investments or other assets of the Fund cannot reasonably be ascertained; or
  - it is not possible to receive remittances in respect of the investments or to make payments pursuant to a Redemption at all or without undue delay.

#### Duration of suspension of dealings

Any such suspension shall take effect at such time as the Fund Manager shall declare but not later than the close of business on the Business Day next following the declaration and thereafter there shall be no determination of Net Asset Value until the Fund Manager shall declare the suspension at an end except that the suspension shall terminate in any event on the first Business Day on which:

- the condition giving rise to the suspension shall have ceased to exist; and
- no other condition shall exist under which suspension is authorised under the Terms and Conditions.

Each such declaration by the Fund Manager shall be consistent with such official rules and regulations (if any) relating to the subject matter thereof as shall have been promulgated by any authority having jurisdiction over the Fund as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations, the determination of the Fund Manager shall be conclusive.

#### **Sufficient guarantees**

Except for statutory provisions providing otherwise or under the circumstances in which Dealings may be suspended, there are sufficient guarantees to redeem Participations and to repay Participants.

## 8 COSTS AND EXPENSES

### **Introduction**

This section provides a summary of article 11 of the Terms and Conditions. Please note that the latest financial statements (both annual and semi-annual) are incorporated by reference in this Information Memorandum. Reference is made to these financial statements as regards actual costs incurred by the Fund and allocated to the Sub-Funds. Included in the financial statements are the total expense ratios, which reference the costs as a percentage of the Net Asset Value of the respective Sub-Fund. Additionally, the performances of the Fund Sub-Funds for the last 3 years are included in the financial statements of the Fund. For changes in the net assets for the last 3 years, reference is made to the financial statements of the Fund of the last 3 years, as made available on the Fund Manager's website.

### **Fees**

#### Subscription Charge

The Fund Manager may impose a Subscription Charge of up to 2% of the Subscription Price, payable to the Fund Manager.

#### Redemption charge

The Fund Manager may impose a Redemption Charge of up to 1% of the Net Asset Value of the Participations at the Dealing Day on which Redemption is effected, payable to the Fund Manager. (Part of) the Redemption Charge will be used for administrative expenses with respect to the Redemption.

#### Management fee

The Fund Manager shall be entitled to receive a monthly Management Fee equal to 1/12 of 1.25% of the Net Asset Value of a Series at the end of the month prior to taking into account the Incentive Fee described below, at the expense of the Fund.

The Management Fee regarding the Net Asset Value of the Fund allocated to a Side-Pocket will be calculated on realized Side-Pocket Assets and will be payable to the Fund Manager at the time of realization, the Fund Manager being only entitled to a Management Fee on cash generated from the Side-Pocket Assets. The Management Fee relating to Fund Assets redeemed in kind will be paid out of these Fund Assets when liquidated.

#### Incentive Fee

An Incentive Fee shall be calculated and payable to the Fund Manager out of each Series in respect of each financial year. In the case of Medium Volatility Sub-Fund, this Incentive Fee equals a sum of 10% of the amount by which the return of the Fund exceeded the return of 1-month Euribor plus 2% per annum.

No Incentive Fee is charged when the Net Asset Value, including dividend payment at the end of the calendar year is below the highest Net Asset Value at year-end of one of the previous three financial years (the "High Water Mark").

For example, the High Water Mark is calculated per issued Series such that a new Participant, having been issued a new Series at €1,000, will have a High Water Mark of €1,000 until such time an Incentive Fee has been paid to the Fund Manager. The new High Water Mark will then be set at a higher level, namely at the Net Asset Value (of the Series) on which the Incentive Fee was calculated.

The Incentive Fee regarding the Net Asset Value of the Fund allocated to a Side-Pocket will be calculated on realized Side-Pocket Assets and will not be payable to the Fund Manager until such time. The High Water Mark for the Side Pocket will be equal to that of the current Series from which it has been allocated. The foregoing will apply also to the Incentive Fee for Fund Assets that have been redeemed in kind.

#### *Total return*

For this purpose, Total Return shall mean the increase of the Net Asset Value of the Sub-Fund as at the end of the financial year over either:

- (a) its level at the end of the previous year; or
- (b) any previous higher level during the last three years.

#### *Benchmark rate*

For this purpose, the benchmark rate shall be set on each Dealing Day and shall apply for the period expiring on the next Dealing Day. The benchmark rate shall be one month Euribor as published by the Dutch Central Bank (*De Nederlandsche Bank*) (“DNB”) on the Dealing Day (or, if not published on such Dealing Day, the last preceding publication).

#### *Payment of Incentive Fee*

The Incentive Fee, monthly determined on a pro rata basis (i.e. per Participation series) and calculated and charged to the Net Asset Value, is paid to the Fund Manager once a year, after the end of the financial year, not before the external auditor has issued an unqualified auditors’ report regarding the annual accounts of the Fund. However, on Redemption of any Participation series during the year, the incentive fee accrued to the date of Redemption in respect of such Participation series shall be payable to the Fund Manager.

### **Costs of the Fund**

#### Custody fee

The current annual fee charged by the Custodian equals (per Sub-Fund per year, excluding VAT) € 10,000 plus an amount of 0.045 % of the Net Asset Value of each Sub-Fund up to € 5 mln and 0.035 % of the Net Asset Value of each Sub-Fund for the part in excess of that amount. The Fund the Fund Manager may negotiate changes in these fees without the consent of Participants being required.

#### Administration fee

The annual fee charged by the Administrator for the Fund’s general administration is calculated as a percentage of the Net Asset Value of the Sub-Fund on a sliding scale as follows: 0.08 % up to € 50 mln, 0.06 % on € 50 mln up to € 100 mln, 0.05 % on € 100 mln up to € 200 mln, 0.045% on € 200 mln up to € 250 mln, and 0.05 % on € 250 mln and above. The minimum administration fee per Sub-Fund is € 35,000 per year.

#### Registrar fee

The fee charged by the Administrator for maintaining the Participation register equals € 2,500 (excluding VAT) per year increased by an amount of € 150 (excluding VAT) per transaction.

#### Overhead costs

The Fund Manager shall provide, at its own expense, office facilities and staff to facilitate the carrying on of the activities of the Fund.

#### Establishment Costs

As from February 1, 2009, all establishment costs of the Fund have been amortized in full.

#### Operating costs

Operating expenses shall be borne by the Fund, including (but not limited to), costs relating to the acquisition and disposal of investments, the fees and expenses of such attorneys, agents, lawyers, auditors or other advisers as the Fund Manager may deem necessary or advisable in relation to the affairs of the Fund, costs relating to the administration of the Fund, mandatory advertising and printing expenses, tax compliance costs, the costs of meetings of Participants, auditors' fees, any taxes due by the Fund, interest, bank charges and litigation related expenses.

#### Audit and other professional fees

Audit- and other professional fees are estimated to be approximately € 30,000 to € 40,000 per year (excluding VAT) and will be split across the Sub-Funds unless specifically attributable to one Sub-Fund.

#### Supervisory costs

Levies of supervisors and costs related to supervision are borne by the Fund and are split equally across the Sub-Funds. The actual supervisory costs due by the Fund vary each year and will be included in the Annual Accounts.

#### Marketing costs

There are currently no marketing costs incurred and these costs are not anticipated in the future.

### **Cost overview and Expense Ratios**

An up to date overview of the various costs regarding the Fund as meant in article 6.1 up to and including 6.14 Annex E of the Market Conduct Supervision (Financial Institutions) Decree and article 5.1 of the Further Regulations on the Supervision of the Conduct of Financial Undertakings (Financial Supervision Act) are included in the most recent Annual Accounts of the Fund.

The Total Expense Ratio (TER) is calculated as total costs divided by the average net worth of the respective Sub-Fund where the total costs includes all costs charged to the Fund except interest costs. Currently, the Investee Funds do not calculate an expense ratio, therefore these cannot be taken into account in calculating the TERs of the Fund. Furthermore, the portfolio composition and calculation of the Investee Funds change regularly. Therefore it is not possible to indicate what the respective TERs of the Investee Funds are. For that reason, in calculating the TERs of the Fund, the costs of the Investee Funds are not taken into account. The costs of the Investee Funds affect the result of these Investee Funds and consequently influence indirectly the results of the Fund and therefore are reflected in the net asset value of the Fund.

For 2009, the TER of the Medium Volatility Portfolio was 1,64%.

## 9 VALUATION AND RESULTS

### **Fund valuation**

The accounts of the Fund will be prepared in accordance with Dutch Generally Accepted Accounting Principles. The establishment costs will be capitalized and amortized over a 5-year period. The Fund's other assets and liabilities will generally be valued at nominal value, unless a permanent impairment occurs.

### **Assessment of Net Asset Value**

As of each Dealing Day, the Fund Manager shall determine the Net Asset Value, in accordance with article 12 of the Terms and Conditions. The Net Asset Value shall be expressed in Euro or, in the case of Sub-Funds valued in another currency, in such currency as may have been designated by the Fund Manager. The Net Asset Value of a Participation will be calculated in accordance with the Terms and Conditions on the Dealing Day and will be provided by the Administrator.

The annual accounts of the Fund are in principle based on audited annual accounts of the underlying Investee Funds. Deviation from this general rule is however possible when the audited accounts of the underlying funds are not received in time. If that is the case, and also in the case that an Investee Fund in a Sub-Fund has a different year-end date, the Net Asset Value of that particular Investee Fund provided by that Investee Fund will be used.

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

The Net Asset Value of a Participation will be published on the website of the Fund Manager.

### **Compensation**

Where an up-to-date value of an underlying investment is not available, or the valuation date does not coincide with that of the Fund, the Fund Manager will use an estimated value. Any valuation made (pursuant to the Terms and Conditions) shall be binding on all Participants. However, the Fund Manager will cause the Fund to revise any final valuation for the Sub-Fund's should they be found to be in error by more than 0.50% of the Net Asset Value attributable to one Participation and will assess whether claiming compensation is appropriate taking into account the costs and benefits thereof.

### **Determination of results**

The result of the Fund on its hedge fund investments will generally be taken as the aggregate of the Fund's attributable share of the result of the hedge funds. The Fund Manager may, if it thinks fit, make adjustments because of the different bases of determination of results applied by the hedge funds, which will be reflected and explained in the accounts. The result made on the Fund's other assets and liabilities will generally be taken into account in the period to which they relate.

### **Historical overview**

For an overview of the most recent Results of the Fund and a comparative overview of the development of the Fund Estate, reference is made to the annual accounts of the latest 3 financial years, the auditor's declarations in that respect, and the most recent semi-annual financial statements, as published on the Fund Manager's website.

## 10 THE FUND MANAGER

### **General**

The Fund Manager has a license under the Wft as manager of investment institutions (*beheerder*). The Fund Manager is a 100% subsidiary of Theta Capital Management B.V.

Theta Capital Management B.V. is a private limited liability company with its statutory seat in Amsterdam, The Netherlands, incorporated on May 28, 2001, and registered with the Trade Register of the Amsterdam Chamber of Commerce under nr. 34150519.

Theta Capital Management is a licensed asset manager under the Wft and adviser based in Amsterdam, The Netherlands, and may offer and/or perform, in or from the Netherlands, discretionary asset management services and fully concentrates on the composition and management of portfolios of hedge funds.

### **Directors**

The managing directors of the Fund Manager are Mr. J.T. van Marle and Mr. T.J.J. de Vries.

#### Tijo van Marle

Tijo van Marle obtained a Master of Business Administration (MBA) degree from the Harvard Business School in 1966. He subsequently worked as an investment banker at Pierson, Heldring & Pierson in Amsterdam (1967-1972), J. Henry Schroder Wagg & Co in London as Director International Capital Markets (1972-1982) and in Hong Kong as Managing Director (1982-1984) and from 1984 to 2001 as Managing Director at Credit Suisse First Boston in London and Amsterdam. He has been a director of Theta since January 2001.

#### Tjeerd de Vries

Tjeerd de Vries studied at the University of Twente and obtained a baccalaureat and an engineering master's degree in mechanical engineering and business administration (1977), respectively. He subsequently became Treasurer at the Dutch Gasunie (1977-1986), Executive Director at Swiss Bank Corporation International in London and Amsterdam (1986-1989), Director at Bank Labouchère (1990-1993), Assistant Director of Corporate Finance and Capital Markets at Rabobank International (1993-1998) and Director Treasury and Director Corporate Finance at Achmea Bank and Achmea Holding (1998-2001). He has been a director of Theta since January 2001.

### **Investment advisory committee**

The investment advisory committee members represent a diversity of experience with a financial background and experience in the area of investment decision-making.

Rijnhard van Tets holds a master's degree in law from Leiden University and was a member of the managing board of ABN AMRO 1990-2002. His responsibilities have encompassed global corporate- and institutional banking and investment banking. Previously he held positions at First Boston Corporation, Sogen Swiss, (New York), Banque Européenne de Crédit in Brussels and the Société Générale in Paris. Mr Van Tets has held directorships at the Amsterdam Stock Exchange, Euroclear and the ISMA. Currently he is a managing director of Laaken Asset Management B.V. and the chairman or a member of a number of supervisory boards at public companies and at charitable and academic organisations.

G. Freiherr von Richter is a German Swiss banker who headed First Clariden Bank and thereafter for a long time Bank Sal Oppenheim in Zürich. Although he retired as Chief Executive, he still maintains an office at Sal Oppenheim and continues to invest for his extended client base. Georg has been active in the hedge fund world for a long time and sits on the Board of Leveraged Capital Holdings.

L.H. Wurfbain spent an important part of his career selecting hedge funds for the three fund of funds launched by Pierson in the early 70's together with Edmond de Rothschild. He is on the boards of several investment funds and extensively travels the world to meet and monitor hedge funds.

R. van Rappard is a Managing Partner of CVC, one of the largest private equity groups in Europe, with responsibilities for Northern Europe and Asia. He joined CVC in 1989 having previously worked for Citicorp Corporate Finance in London and Amsterdam. Mr. Van Rappard is a Dutch citizen and holds an MA Degree in Economics from Columbia University, New York and an LLM from the University of Utrecht, Holland.

# 11 TAXATION

## **Taxation General**

Prospective Participants are urged to consult their own professional advisers regarding the possible tax and legal consequences of acquiring, holding or disposing of Participations under the laws of the jurisdictions of which they are citizens, residents or domiciliaries and in which they conduct business. The Fund has been structured so as to reduce as much as possible the additional tax cost compared to a direct investment by the Participants in the underlying funds (which generally are not directly accessible to the Participants).

## **Taxation of the Fund**

The Fund aims to qualify as a closed mutual fund for tax purposes being exempted from corporate income tax. The Fund Manager and the Custodian shall use reasonable endeavours to assist Participants in obtaining the benefit of any tax exemptions applicable to investments made by the Fund and any tax refunds available in respect of tax withheld from sums receivable by the Fund. The Fund Manager and the Custodian shall not be obliged to seek any exemption or refund where the effort or expense would be disproportionate to the sums likely might be recovered. If the Fund Manager thinks fit, the amount distributable to any Participant may take into account the availability of tax exemptions or refunds attributable to him and to the rate of withholding applicable to him.

## **Taxation of Participants – The Netherlands**

Dutch resident private individual Participants will generally be taxed annually on a notional income of 4% of their net investment assets, including any Participations, at a rate of 30%, regardless of whether any dividends are received or any capital gains are realised with respect to the Participations.

For Dutch resident institutional Participants that are subject to corporate income tax, both income and capital gains/losses, as determined by Dutch fiscal law, relating to the Fund are taxed/ deductible at the regular corporate income tax rate, unless the Dutch participation exemption can be claimed upon such income and/or capital gains.

Non-Dutch resident Participants who derive income from Participations or who realise a gain on the disposal or redemption of Participations will not be subject to Dutch taxation on income or capital gains unless:

- (a) such income or gain is attributable to an enterprise or part thereof which is carried on through a permanent establishment or permanent representative in The Netherlands; or
- (b) such income or gain is attributable to activities carried out by the non Dutch resident Participant in the Netherlands and such activities exceed ‘normal investment activities’.

As to (b) above any applicable tax treaty between the jurisdiction of residence of the non-Dutch resident Investor and the Netherlands will generally prevent the Netherlands from actually levying any tax.

To the extent the Fund (or its Sub-Funds) invests in Dutch resident entities, Dutch dividend withholding tax may be due upon dividends distributed by these entities via the Fund to the Participants. The dividend withholding tax rate may be reduced under the application of a tax treaty concluded by the Netherlands and the jurisdiction(s) of which the Participant(s) are tax resident.

## 12 Miscellaneous

### **Complaints**

Participants may submit complaints regarding the Fund to the Fund Manager's address, by regular mail.

### **Register**

The Participants are registered in a Register. The Fund Manager has delegated the maintenance of the Register to the Administrator.

#### Information in the Register

The Register will record the names and addresses of all Participants, the particulars of their Participations in each Sub-Fund, and the manner in which a Participant wishes to receive payments and any distributions.

#### Mandatory notification to Register of change in information

Each Participant must notify the Administrator promptly of any change in the information as recorded in the Register and the Fund Manager shall at all times be entitled to rely on the accuracy of the information provided by each Participant to the Administrator in this respect.

### **Related Party transactions**

There will be no related party transactions, except for possible trades with other fund-of-funds managed by the Fund Manager. Such transactions are not concluded at a regulated market or another market in financial instruments, but will always be at the net asset value of the underlying fund and therefore on market-based terms and conditions.

### **Personal Data Protection Act**

Theta will ensure that personal data that has been collected and processed in connection with the Fund, will be treated confidentially. Theta will comply with the Personal Data Protection Act (Wet bescherming persoonsgegevens) and has notified the Dutch Data Protection Authority (College bescherming persoonsgegevens) of the processing of personal data.

Personal data of Participants are collected and processed. Theta and the Custodian will use the personal data in connection with their duties as mentioned in the Terms and Conditions and the Information Memorandum. The personal data will not be shared with third parties, unless this is necessary to carry out the duties under the Terms and Conditions and the Information Memorandum or when statutory provisions make it mandatory to share such information with third parties.

### **Voting policy**

As a fund-of-funds, the Fund normally does not have voting rights in other enterprises. Occasionally, Theta is asked to vote regarding corporate actions of a Investee Fund. In such a case the Fund Manager will vote in manner as is deemed in the best interest of the Fund.

# ASSURANCE REPORT

## **Assurance report (pursuant to Section 4:49(2)(c) of the Dutch Financial Supervision Act)**

### *Introduction and responsibilities*

We have performed an assurance engagement concerning the content of the Prospectus of Theta Multistar Fund. In connection with this, we examined whether the Prospectus dated August 1, 2010 issued by Theta Fund Management B.V., Amsterdam, contains at least the information required under Section 4:49 (2)(b) to (2)(e) of the Financial Supervision Act. With respect to Section 4:49(2)(b) to (2)(e), this assurance engagement is aimed at providing reasonable assurance. Unless expressly stated otherwise in the Prospectus, the information included in the Prospectus has not been audited.

The responsibilities were allocated as described below.

The Fund's manager is responsible for drawing up a Prospectus that contains at least the information required pursuant to the Financial Supervision Act.

Our responsibility is to express conclusion as referred to in Section 4:49 (2)(c) of the Financial Supervision Act.

### *Scope*

We conducted our examination in accordance with Dutch law, including Standard 3000, "Assurance Engagements Other Than Audits or Reviews of Historical Financial Information". Based on the foregoing, we performed the procedures we deemed necessary in the circumstances to express a conclusion.

We checked whether the Prospectus contained the information required under Section 4:49 (2b) to (2)(e) of the Financial Supervision Act-

This Act does not require that the auditor performs additional procedures with respect to Section 4:49(2)(a).

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our conclusion.

### *Conclusion*

Based on our procedures performed and the matters discussed in the Introduction and responsibilities section of this report, we conclude that the Prospectus contains at least the information under Section 4:49 (2)(b) to (2)(e) of the Financial Supervision Act.

With respect to Section 4:49(2)(a) of the Financial Supervision Act, we would note that, to the best of our knowledge, the Prospectus contains the information required.

The Hague, 1 August 2010  
For Ernst & Young Accountants LLP

Signed by drs. R.J. Bleijs RA

# ANNEX I

## REGISTRATION DOCUMENT THETA FUND MANAGEMENT B.V.

### I Information regarding the activities of the Fund Manager

This is the registration document of Theta Fund Management B.V. (the “Fund Manager”), acting as fund manager of Theta Multistar Fund (the “Fund”), as referred to in article 4:48 of the Financial Supervision Act *Wet op het financieel toezicht* (“Wft”) and article 117 of the Business Conduct Financial Undertakings Supervision Decree, as mentioned in Appendix D thereto.

The Fund is an open ended fund with an umbrella structure, including two sub-funds:

- the Low Volatility Portfolio; and
- the Medium Volatility Portfolio.

The Fund Manager’s activities consist of managing the Fund.

### II Data regarding the directors of the Fund Manager and the Custodian

#### Fund Manager

The persons that form the day-to-day management of the Fund Manager

- Mr. J.T. (Tijo) van Marle; and
- Mr. T.J.J. (Tjeerd) de Vries.

None of the persons above performs activities outside the Fund Manager that have a connection with the operations of the Fund Manager, the Fund and / or the Custodian.

#### Custodian

KAS-Trust Bewaarder Theta Multistar Fund B.V. (the “Custodian”) is the custodian of the Fund. Kas-Trust B.V. forms the board of directors of the Custodian. The following persons constitute the board of directors of KAS-Trust B.V. and the persons that (indirectly) conduct the day-to-day management of Kas-Trust:

- Mr. H. (Henk) Brink; and
- J.N.P. Laan.

KAS-Trust B.V. is a wholly owned subsidiary of KAS BANK N.V., the following persons constitute the board of KAS BANK N.V.:

- A.A. Roëll;
- R.J. Kooijman;
- N.A. Blom; and
- S.A.J. van Katwijk.

None of the persons mentioned above performs activities outside the Custodian that have a connection with the operations of the Fund Manager, the Fund and / or the Custodian.

### III General data regarding the Fund Manager and the Custodian

#### Fund Manager

Name:	Theta Fund Management B.V.
Legal form:	Private limited liability company ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> )

Seat: Amsterdam  
Date of incorporation: May 9, 2001  
Reg.Nr. Chamber of Commerce: 27198870  
Place of Registration: Chamber of Commerce for Amsterdam.

The Fund Manager is a 100% subsidiary of Theta Capital Management B.V.

#### Custodian

Name: KAS-Trust Bewaarder Theta Multistar Fund B.V.  
Legal form: Private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*)  
Seat: Amsterdam  
Date of incorporation: October 14, 2005  
Reg.Nr. Chamber of Commerce: 34237093  
Place of Registration: Chamber of Commerce for Amsterdam.

The Custodian is a 100% subsidiary of KAS BANK N.V.

#### Auditor's declarations on minimum net capital

The auditors for the Fund Manager and the Custodian have submitted declarations that the net capital requirements of the Fund Manager and the Custodian, as referred to in article 3:53 Wft, have been satisfied. Such declarations are available at the website of Theta Fund Management.

#### Auditor's declaration on annual accounts of Fund Manager and Custodian

The respective (consolidated) annual accounts of the Fund Manager and the Custodian have been audited by the Fund Manager's and Custodian's respective auditors. The most recent declaration from each of the auditors is available at the Fund Manager's website.

### **IV Information on reporting**

The Fund Manager will prepare monthly, semi-annual, and annual written reports on the Fund's portfolio. The reporting currency will be Euro.

The financial year of the Fund Manager and the financial year of the Custodian are equal to the calendar year.

The articles of association, the annual accounts, and the annual report of the Fund Manager and the Custodian and the semi-annual accounts of the Fund Manager are made available on the Fund Manager's website: [www.thetacapital.com](http://www.thetacapital.com). At request of the Participant, the Fund Manager shall send copies of these documents free of charge to the Participant's (electronic) address.

### **V Information regarding replacement of the Fund Manager or the Custodian.**

As mentioned in article 5.4 and 6.8 of the Terms and Conditions of Participation, Management and Custody of the Fund (the "Terms and Conditions"), neither the Fund Manager nor the Custodian shall be entitled to resign unless replaced by a successor with the sanction of an ordinary resolution. The meeting of Participants needs to be held within 4 (four) weeks after the notice by the Custodian or the Fund Manager of their respective intentions to resign. Only the Fund Manager may nominate a Custodian for appointment as successor.

In addition to that, by virtue of article 6.9 of the Terms and Conditions of the Fund, the Fund Manager may be removed from office and a new Fund Manager may be appointed, by special resolution, in the event of fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*)

or a material breach (not remedied within one hundred and twenty (120) days of a Participant giving notice to the Fund Manager requiring it to do so) by the Fund Manager in carrying out its obligations under the Terms and Conditions.

The Fund Manager declares that it will give notice of a request to Dutch Financial Markets Authority (*Autoriteit Financiële Markten*) pursuant to article 1:104(1)a of the Act on Financial Supervision (*Wet op het financieel toezicht*) to withdraw its license at the (electronic) address of each Participant as well as on its website.

# ANNEX II

## TERMS AND CONDITIONS OF PARTICIPATION, MANAGEMENT AND CUSTODY

### 1 Definitions

- 1.1 The following terms have the definitions hereinafter indicated whenever used in these Terms and Conditions with initial capital letters:
- 'Administrator' means Kas Bank N.V. or such other entity as may be appointed as administrator of the Fund by the Fund Manager, from time to time;
  - 'Annual Management Fee' means the fee payable to the Fund Manager under Article 11.1;
  - 'Application Form' means the form of application or subscription to participate in the Fund completed by a Participant;
  - 'Business Day' means a day on which banks are generally open for business in both Amsterdam and New York City;
  - 'Cash' means cash in any currency held in interest bearing call accounts or bank deposits;
  - 'Cash Equivalents' means money market instruments in any currency which are regularly negotiated and which have a residual maturity of twelve (12) months or less;
  - 'Commencement Date' means, in relation to any Sub-Fund, the date upon which Participations in that Sub-Fund are first issued;
  - 'Costs' means all costs, fees and expenses incurred by or charged to the Custodian or the Fund Manager in connection with the Fund Estate;
  - 'Custodian' means the custodian of the Fund, being Kas-Trust Bewaarder Theta Multistar Fund or such other custodian of the Fund Estate as may be appointed in accordance with the Terms and Conditions, from time to time;
  - 'Custodian Articles' means the articles of association (*statuten*) of the Custodian as these may be amended from time to time;
  - 'Dealing Day' means the last Business Day in each month and such other days as the Fund Manager may determine;
  - 'Fund' means the contractual arrangements between the Participants, Fund Manager and the Custodian in relation to the participation in and the management, custody and administration of the Fund as governed by the Terms and Conditions and the Application Form, also referred to as the Theta Multistar Fund;
  - 'Fund Assets' means the Fund Means and the Fund Investments relating to a Sub-Fund;
  - 'Fund Bank Account' means a bank account in the name of the Custodian for the account of the Fund;
  - 'Fund Estate' in relation to any Sub-Fund, means the totality of the Fund Assets and the Fund Obligations relating to that Sub-Fund;
  - 'Fund Investments' means all Securities and/or other assets (*goederen*) other than Fund Means that are acquired and held by the Custodian for a Sub-Fund in its own name on behalf and for the account of the Participants in connection with the Fund;
  - 'Fund Manager' means Theta Capital Management B.V. or an affiliate thereof or such other investment manager, as may be appointed by the Participants from time to time in accordance with Article 6;
  - 'Fund Means' means Cash and Cash Equivalents;
  - 'Fund Obligations' means the liabilities which the Custodian (or the Fund Manager, whether or not on behalf of the Custodian) assumes and/or incurs in its own name on behalf and for the account of a Sub-Fund;
  - 'Incentive Fee' means the fee payable to the Fund Manager under Article 11.3;
  - 'Interested Party' means the Fund Manager, its associates and its respective directors, officers, shareholders or partners;
  - 'Investee Fund' means a company, partnership, mutual fund or other pooled investment vehicle in, or Managed Account through, which the Fund has made an investment;

‘Information Memorandum’ means the prevailing information memorandum relating to the Fund, as amended or replaced from time to time;

‘Investment Objectives’ means the investment objectives of a Sub-Fund and the restrictions imposed on the Fund Manager referred to in the Information Memorandum, as amended from time to time;

‘License’ the license as asset manager (*beheerder*) of the Fund Manager under the applicable financial supervision laws;

‘Linked Fund’ means a collective investment vehicle or investment portfolio managed or advised by the Fund Manager and investing in parallel with the Fund, as described in Article 18;

‘Managed Account’ a segregated portfolio of assets placed with a portfolio manager for discretionary management by such portfolio manager on behalf of a Sub-Fund;

‘Minimum Holding’ means the minimum value of the Participations in the Fund which may be held or initially acquired by any Participant, as determined by the Fund Manager from time to time;

‘Net Asset Value’ means the net asset value of a Participation, Series, Sub-Fund or the Fund as determined in accordance with the provisions of Article 12 calculated to one (1) decimal place;

‘Ordinary Resolution’ means a resolution (a) in writing (which may consist of one or more documents in like form each signed by one or more Participants) signed by Participants whose Participations represent in excess of fifty percent (50%) of the total Participations or (b) passed at a meeting of Participants by Participants whose Participations represent in excess of fifty percent (50%) of the total Participations;

‘Participants’ means the persons or entities which participate in the Fund in accordance with the terms of the Application Form and the Terms and Conditions;

‘Participations’ means the units in which the rights of the Participants to the Fund Estate have been divided, each Participation representing an equal interest in the Fund Estate without priority or preference of one over the other;

‘Redemption’ means the redemption of a Participation;

‘Register’ means a register maintained by the Fund Manager for the administration of the Participations and Participants;

‘Securities’ means ordinary shares, preference shares, convertible securities or other securities or interests in a company or entity, including but not limited to any Investee Fund;

‘Side Pocket’ means the Fund Assets and Fund Obligations of a Sub-Fund which have been set aside by the Fund Manager in the Sub Fund pursuant to Article 7.4 and shall be administered separately from then on;

‘Series’ means a series of Participations issued on a particular Dealing Day in a Sub-Fund;

‘Special Resolution’ means a resolution:

(a) in writing (which may consist of one or more documents in like form each signed by one or more Participants) signed by Participants whose Participations represent seventy-five percent (75%) or more of the total Participations; or (b) passed at a meeting of Participants by Participants whose Participations represent seventy-five percent (75%) or more of the total Participations;

‘Subscription Charge’ means the subscription charge due by a Participant;

‘Subscription Price’ means the subscription price payable for the acquisition of a Participation;

‘Sub-Fund’ means a sub-fund of the Fund and may include any Series which the Fund Manager may decide to establish from time to time; and

‘Terms and Conditions’ means the terms and conditions of participation, management and custody of the Fund set forth herein and as amended from time to time.

1.2 Unless the context requires otherwise, references to Articles are to articles of these Terms and Conditions.

## **2 Name**

2.1 The name of the Fund is: Theta Multistar Fund.

## **3 Objects, Sub-Funds, and Series**

3.1 The Fund is a mutual fund (*besloten fonds voor gemene rekening*). These Terms and Conditions and the arrangements made in connection herewith do not establish a partnership (*maatschap* or *vennootschap onder firma*) or limited partnership (*commanditaire vennootschap*).

3.2 The Fund may consist of Sub-Funds. If any, a separate portfolio of assets shall be maintained for each Sub-Fund and, save as expressly required by the Terms and Conditions, the Fund Assets of any Sub-Fund shall be available only to meet the liabilities relating to that Sub-Fund and not those of any other Sub-Fund.

3.3 A Sub-Fund may consist of Series having the same investment objectives and policies and underlying assets as all other Series within a Sub-Fund, but in addition thereto may have different rights and obligations, in particular in relation to the effective applicable Incentive Fee, and have a different Net Asset Value.

3.4 The Fund Manager may where it deems such practicable convert at any Dealing Day all the Participations of any Series into any other Series of the same Sub-Fund.

## **4 Subscriptions**

4.1 Participations in each Sub-Fund shall be offered on the Commencement Date at an initial fixed Subscription Price of € 1,000 each plus the Subscription Charge or at any Dealing Day thereafter at Net Asset Value plus the Subscription Charge. Participations may be issued in Series on any subsequent Dealing Day after payment to the Custodian of a Subscription Price equal to € 1,000 plus the Subscription Charge.

4.2 Payment must be made to the relevant Fund Bank Account in accordance with the Information Memorandum for value at least ten (10) Business Days before the Dealing Day, unless otherwise agreed by the Fund Manager.

4.3 Fractional Participations may be issued at the discretion of the Fund Manager.

4.4 The Fund Manager may, at its sole discretion, suspend the issue of new Participations or reject any subscription for Participations in whole or in part and return subscription moneys to applicants without interest.

4.5 The Fund Manager may, at its discretion, agree to accept the transfer of Securities to the Fund, by way of exchange, in satisfaction of the Subscription Price payable. Any such Securities will be valued in accordance with the valuation principles applied by the Fund.

## **5 Custody**

5.1 All the Fund Assets shall be legally owned by, and will be administered in the name of, the Custodian.

5.2 The Custodian shall:

5.2.1 acquire and hold the Fund Investments for the purpose of management and custody (*ten titel van beheer en bewaring*) on behalf and for the account of the Participants;

5.2.2 act solely in the interests of the Participants;

5.2.3 not acquire any assets or assume any obligations for its own account or for the account of third parties who or which are not Participants;

5.2.4 act with respect with the Fund Investments only together with the Fund Manager and in accordance with instructions that have been conveyed to the Custodian in such manner as may be agreed from time to time between the Fund Manager and the Custodian;

- 5.2.5 only surrender documents of value deposited for safe-keeping against receipt of a declaration of the Fund Manager stating that surrender is required for the regular performance of the management of the Fund;
- 5.2.6 open and maintain Fund Bank Accounts for each Sub-Fund and the Fund as a whole with such bank or banks as the Fund Manager may from time to time select;
- 5.2.7 shall hold all uninvested monies of the Fund in such accounts;
- 5.2.8 insofar as sufficient uninvested monies are available for the purpose in the relevant Fund Estate, pay for and receive all Investments purchased for the account of the Sub-Funds;
- 5.2.9 from time to time, for the account of the Participants in the relevant Sub-Fund, hold or procure to be held all documents of title to or evidencing ownership of Fund Investments and shall use its best endeavours to procure that such Fund Investments (other than Fund Investments transferable by delivery (if any)) shall as soon as practicable after receipt of the necessary documents by the Custodian be registered in the name of the Custodian or in the name of a nominee of the Custodian or in the name of a sub-custodian or a nominee of a sub-custodian with a suitable designation and Fund Investments transferable by delivery shall be dealt with as the Custodian may think proper for the purpose of providing for the safe keeping thereof;
- 5.2.10 on receipt of instructions from the Fund Manager make or arrange for the delivery of the documents of title to or evidencing ownership of Fund Investments which have been sold;
- 5.2.11 collect, receive and deposit in Fund Bank Accounts all income and other payments with respect to the Fund Investments and all other payments due to the Fund and shall execute such ownership and other certificates and other claim forms as shall from time to time be required for fiscal and tax purposes and shall pay any taxes it is required to pay in connection therewith (all such payments being debited to the Fund Bank Accounts) the Fund Investments being security for the due payment of the same;
- 5.2.12 present for payment all coupons and other income payments requiring presentation;
- 5.2.13 present for repayment all Fund Investments which may mature or be called, redeemed or otherwise become repayable;
- 5.2.14 pay or cause to be paid insofar as sufficient uninvested monies are available for the purpose, such bills, statements or other obligations of the Fund as may be approved generally, or from time to time, by the Fund Manager; and
- 5.2.15 without delay forward to the Fund Manager all notices of meetings, reports, circulars and other documents and correspondence received by it or its nominee as holder of any Fund Investment and shall (so far as it is able) upon the written request of the Fund Manager from time to time execute and deliver or cause to be executed or delivered to the Fund Manager or its nominee such powers of attorney or proxies as may reasonably be required in such name or names as the Fund Manager may reasonably request authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the Fund Investments; and carry out any additional duties as from time to time and at any time agreed mutually between the Fund Manager and the Custodian.
- 5.3 The Custodian shall only be liable towards the Fund and the Participants for losses suffered by them to the extent that the losses result from culpable non-performance (*verwijtbare niet-nakoming*) or defective performance (*gebrekkige nakoming*) of its obligations, also in case the Custodian delegated the custody of Fund Assets to a third party.
- 5.4 The Custodian shall not be entitled to resign without the appointment of a new custodian in its place by an Ordinary Resolution. If the Custodian notifies the Fund Manager of its wish to resign, the Fund Manager shall within 4 weeks convene a meeting of Participants to approve the appointment of a successor as nominated at the initiative of the Fund Manager only.

## **6 Management and investments**

- 6.1 The Fund Manager is charged with the management and administration of the Fund Estate and is, subject to these Terms and Conditions, entitled to invest the Fund Means, to dispose

of or exchange any of the Fund Investments, to assume Fund Obligations and to perform any and all other acts in its own name on behalf and for the account of the Fund which are in the opinion of the Fund Manager reasonably necessary for, or conducive to, the attainment of the Investment Objectives. The Fund Manager may, from time to time, seek third party advice regarding overall asset allocation and investment management.

- 6.2 In managing the Fund Estate, the Fund Manager shall act solely in the interest of the Participants. In the performance of its obligations and in the exercise of its rights, powers and authorities hereunder, the Fund Manager shall exercise the standard of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character, risk profile and investment objectives as the relevant Sub-Fund, having regard to the provisions hereof.
- 6.3 The Fund Manager may accordingly delegate all or any part of its powers and duties under these Terms and Conditions to one or more suitable third parties such as the Administrator.
- 6.4 The management and administration of the Fund Estate shall be performed for the account and at the risk of the Participants in the relevant Sub-Fund. Benefits and/or losses resulting therefrom shall consequently be for the benefit of or be borne by such Participants. No Participant shall be liable to contribute any sum to the Fund Estate beyond the Subscription Price for his Participations.
- 6.5 The Fund Manager may borrow for the account, and at the expense, of a Sub-Fund to finance Fund Assets, Fund Obligations and Costs. The sum outstanding at any time in relation to any Sub-Fund shall not exceed twenty percent (20%) of the book value of the Fund Assets. Subject to that, Fund Investments may not be financed with any funding (including but not limited to debt funding) other than Subscription proceeds.
- 6.6 Forthwith after each agreement to acquire or dispose of a Fund Investment the Fund Manager shall provide full details to the Custodian.
- 6.7 Any transaction undertaken by the Fund Manager in breach of the Terms and Conditions shall be cancelled and shall be for the account of the Fund Manager.
- 6.8 The Fund Manager shall not resign or withdraw from the Fund unless replaced by a successor with the sanction of an Ordinary Resolution (meeting of Participants to be held within 4 (four) weeks after the Fund Manager has announced its intention to resign).
- 6.9 The Fund Manager may be removed from office and a new Fund Manager may be appointed, by Special Resolution, in the event of fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or a material breach (not remedied within one hundred and twenty (120) days of a Participant giving notice to the Fund Manager requiring it to do so) by the Fund Manager in carrying out its obligations under the Terms and Conditions.
- 6.10 Neither the Fund Manager nor the Administrator nor any of their respective directors, employees or affiliates shall be liable towards the Participants for a loss suffered by them in connection with the performance of its respective duties and responsibilities, unless and to the extent that such loss is directly caused by the gross negligence (*grove schuld*) or wilful default (*opzet*) of the Fund Manager. Neither the Fund Manager nor any of its respective directors, employees or affiliates shall be liable towards the Participants for a loss suffered by them as a result of any act or omission of a third party.
- 6.11 The Fund Manager, the Custodian and any administrative agent, and their respective affiliates, officers, directors, shareholders, agents and employees shall be entitled to be indemnified out of the Fund Assets against any claims, liabilities, costs and expenses (including reasonable legal fees) incurred in relation to the performance of their duties in relation to the Fund provided however that no such person shall be so indemnified with respect of any matter resulting from its or his fraud, gross negligence (*grove schuld*) or wilful default (*opzet*) in the performance by it or him of its or his obligations and duties in relation to the Fund or material breach of the Terms and Conditions not remedied within sixty (60) days of receiving notice requiring such remedy.

## **7 Fund Means**

- 7.1 The Fund Means of the Fund may be received by the Custodian in consideration for the subscription of Participations, in respect of or in exchange for Fund Investments, by creation and increase of Fund Obligations and/or by creation, increase and application of provisions and reserves, if any.
- 7.2 The Fund Means shall be held by the Custodian pending the selection and purchase of suitable investments and reinvestments by the Fund Manager, and to maintain liquidity to meet payment obligations which arise or may arise.
- 7.3 The Fund Means may be used to pay for all Fund Obligations and Costs relating to that Sub-Fund. Where an expense is incurred, or liability suffered, by the Fund, which is not solely or directly attributable to any one Sub-Fund, it shall be allocated between the Sub-Funds on such basis as the Fund Manager considers equitable.
- 7.4 The Fund Manager shall be entitled to establish one or more Side Pocket in a Sub-Fund and allocate such Funds Assets and Fund Obligations to a Side Pocket as it deems necessary in the interests of the Participants. The Participants shall be entitled to the Fund Assets of the Side Pocket pro rata their Participations at the time the Side Pocket shall be created. Participants subscribing for Participations in a Sub-Fund in which a Side Pocket has been created shall not receive Participations in the Side Pocket(s). The Terms and Conditions applying to Participations shall apply accordingly to Participations in a Side Pocket, save that Participations in a Side Pocket cannot be redeemed. If and when the Fund Assets of a Side Pocket shall generate cash the Fund Manager shall (pro rata) distribute such cash to the Participants participating in the Side Pocket who redeemed Participations in the Sub-Fund since the Side Pocket has been established.

## **8 Authority to invest and administer Fund Assets**

- 8.1 Subject to the provisions set forth in the Terms and Conditions, the Fund Manager may invest the Fund Means of a Sub-Fund in any Fund Investments and the determination of the Fund Manager as to whether or not any investments are of a type which may be purchased or held by the Custodian in view of the Investment Objectives of that Sub-Fund shall be conclusive.
- 8.2 It is the intention that (subject only to the specific restrictions mentioned herein) the Fund Manager shall have the broadest power and authority in making investments consistent with the investment powers herein provided. The Fund Manager shall have full discretionary power to retain Fund Assets for as long a period as it shall think proper and to manage, convert, exchange, transfer and dispose of the Fund Assets. The Fund Manager shall have and may exercise every right and privilege pertaining to management provided that the exercise of such right or privilege is, in its opinion, conducive to the attainment of the Investment Objectives.
- 8.3 Without limiting the generality of the foregoing, the Fund Manager's powers and authority shall include:
  - 8.3.1 to enter into, perform and carry out contracts of any kind necessary or incidental to the matters set forth in this Article, including, without limitation, contracts with affiliates of the Fund Manager and/or with the Custodian;
  - 8.3.2 to bring, sue, prosecute, defend, settle or comprise actions at law related to the purposes of the Fund;
  - 8.3.3 to employ, retain or otherwise secure or enter into agreements or other undertakings with persons or firms in connection with the management and operation of the Fund's business, including, without limitation, auditors, attorneys, consultants, investment bankers, any other agents, all on such terms and for such consideration as the Fund Manager deems advisable;

- 8.3.4 to enter into partnership and joint venture agreements and to take any and all actions incidental to investing in Investee Funds;
- 8.3.5 to exercise the statutory and contractual voting rights attached to or concerning the Fund Investments; and
- 8.3.6 to engage in any kind of lawful activity, and perform and carry out contracts of any kind, necessary or advisable in connection with the accomplishment of the purposes of the Fund.

## **9 Participants**

- 9.1 Each Participant shall be beneficially entitled to the Fund Estate of a Sub-Fund pro rata to the number of its Participations in that Sub-Fund.
- 9.2 All benefits and (subject to Article 6.4) burdens, beneficially attached to the ownership of the Fund Estate, shall be in favour and for the account of each Participant pro rata to the number of its Participations in that Sub-Fund.
- 9.3 By signing an Application Form, each Participant shall be bound by and subject to the Terms and Conditions.

## **10 Participations**

- 10.1 Participations shall be in registered form only. Certificates shall not be issued.
- 10.2 In the Register the names and addresses of all Participants will be recorded, stating the particulars of their Participations in each Sub-Fund including the Series and the date of acquisition of the Participations. The Register shall also state the manner in which a Participant wishes to receive payments and any distributions.
- 10.3 The Fund Manager shall at all times be entitled to rely on the accuracy of the information provided by each Participant for inclusion in the Register and to treat such information as conclusive with respect to such Participant and its entitlement to its Participations. The Fund Manager shall not be bound:
  - 10.3.1 by any change in such information which has not been notified to the Fund Manager in accordance with Article 10.4; or
  - 10.3.2 to recognise any interest or claim of any person to a Participation other than the Participant whose details have been duly entered in the Register in respect thereof.
- 10.4 Each Participant shall notify the Fund Manager promptly of any change in the information referred to in Article 10.3 in relation to such Participant. The Fund Manager shall upon receipt cause the Register to be amended accordingly within five (5) Business Days.
- 10.5 Within ten (10) Business Days following entry (or any change in the entry relating to it) the Fund Manager shall send to each Participant an extract from the Register signed by the Fund Manager, in so far as it concerns its Participation(s). Such extract shall only serve as evidence of the entry and is non-negotiable.
- 10.6 Upon written request to that effect by the Participant to the Fund Manager, the Register shall be available at the Fund Manager's office for the inspection of each Participant on Business Days, but only in so far as it concerns the Participant's own entry.

## **11 Costs and fees**

- 11.1 Annual Management Fee
  - 11.1.1 The Fund Manager shall be entitled to receive out of the Fund Assets an annual management fee equal to one and one quarter percent (1.25%) of the Net Asset Value of the Fund prior to taking into account the Incentive Fee.
  - 11.1.2 The annual management fee shall accrue on each Dealing Day by reference to the Net Asset Value on that day and be paid quarterly in arrears on, the last Business Day in each of March, June, September and December.
- 11.2 Subscription Charge
  - The Fund Manager shall be entitled to a Subscription Charge of up to two percent (2%) to be paid by the Participant in addition to the Subscription Price.
- 11.3 Incentive Fee

- 11.3.1 The Fund Manager shall be entitled to an annual incentive fee calculated per Series equal to: (1) in the case of the Low Volatility Sub-Fund – a sum equal to 10% of the amount by which Total Return exceeded the Benchmark Rate; and (2) in the case of the Medium Volatility Sub-Fund – a sum equal to 10% of the amount by which Total Return exceeded the Benchmark Rate plus 2% per annum.
- For this purpose Total Return shall mean the increase of the Net Asset Value of a Series of the Sub-Fund as at the end of the financial year of such Series over either (a) its level at the end of the previous year or (b) any previous higher level during the last three years.
- For this purpose, the Benchmark Rate shall be set on each Dealing Day and shall apply for the period expiring on the next Dealing Day. The Benchmark Rate shall be one month Euribor as published by the Dutch Central Bank (*De Nederlandsche Bank*) on the Dealing Day (or, if not published on such Dealing Day, the last preceeding publication).
- In calculating the Incentive Fee in an absolute amount:
- 1) an equitable adjustment shall be made for Participations subscribed and redeemed during the financial year; and
  - 2) any distributions paid to Participants during the financial year shall be added back.
- 11.3.2 The Incentive Fee shall be payable to the Fund Manager as to 90% of the estimated amount thereof one month after the end of the relevant financial year. The balance shall be payable within 14 days following completion of the audit of the accounts for the relevant financial year. On Redemption of Participations during the year an amount equal to the Incentive Fee accrued to the date of Redemption in respect of such Participations shall be due to the Fund Manager.
- 11.4 Expenses to be borne by the Fund Manager  
The Fund Manager shall at its own expense provide office facilities and staff to facilitate the carrying on of the activities of the Fund
- 11.5 Establishment Costs  
The fees and expenses payable in connection with the formation of the Fund (including, but not limited to, fees and expenses of attorneys, tax advisers, auditors, consultants and other professional advisers and marketing, advertising, travel, out-of-pocket expenses and printing expenses of the Fund Manager) shall be borne by the Fund.
- 11.6 Other Operating Costs  
All other operating expenses shall be borne by the Fund (and allocated between the Sub-Funds as the Fund Manager considers equitable) including (but not limited to):
- 11.6.1 management or advisory fees payable in respect of any Investee Fund, fees, brokerage expenses and duties associated with any investment proposals, or with the realisation of investments and other costs of acquisition and disposal of investments;
  - 11.6.2 the fees and expenses of the Custodian and the Administrator;
  - 11.6.3 the fees and expenses of such attorneys, agents, lawyers, auditors or other advisers as the Fund Manager may deem necessary or advisable in relation to the affairs of the Fund and the parties involved;
  - 11.6.4 the cost of preparation of tax returns and establishing the tax status of the Fund;
  - 11.6.5 the costs of meetings of Participants;
  - 11.6.6 auditors' fees and expenses;
  - 11.6.7 transfer and other taxes and duties (including any irrecoverable value added tax payable by the Fund Manager in respect of services provided to it in connection with the Fund);
  - 11.6.8 interest;
  - 11.6.9 bank charges;
  - 11.6.10 fees and expenses in connection with pursuing or defending any complaint or litigation by or against the Fund; and
  - 11.6.11 any other expenses reasonably incurred in connection with the operation of the Fund.

## **12 Net Asset Value and value of the Participations**

- 12.1 As of each Dealing Day, the Fund Manager shall determine the Net Asset Value taking the following into account:
- (a) the value of units, shares or other securities of any unit trust, mutual fund, investment company or other similar investment vehicle or collective investment scheme shall be derived from the most up to date prices available from the managers or their respective administrators thereof;
  - (b) deposits shall be valued at their principal amount plus accrued interest calculated on a daily basis;
  - (c) certificates of deposit shall be valued with reference to the best price bid for certificates of deposit of like maturity, amount and credit risk, for settlement as at the relevant Dealing Day;
  - (d) treasury bills and bills of exchange shall be valued with reference to prices ruling in the appropriate markets for such instruments for settlement as at the relevant Dealing Day;
  - (e) forward foreign exchange contracts will be valued by reference to the market value of similar contracts settled as at the relevant Dealing Day;
  - (f) all valuations of financial futures contracts and purchased or solid options shall be assessed by reference to the prevailing prices on the relevant futures/options exchanges;
  - (g) where any Security owned or contracted for by the Sub-Fund is listed or dealt in on a stock exchange recognised as such under the securities laws of the jurisdiction in which it is situated or any over-the-counter market, all calculations of the Net Asset Value which are required for the purpose of computing the price at which Shares are to be issued, shall be based on the latest trade price therefor as at the relevant Dealing Day. When such security is listed or dealt in on more than one stock exchange or over-the-counter market the Fund Manager may in its absolute discretion select any one of such stock exchanges or over-the-counter markets for the foregoing purposes;
  - (h) in respect of any security the quotation of which has been temporarily suspended or in which there has been no recent trading, the value shall be taken to be a reasonable estimate of the amount which would be received by a seller by way of consideration for an immediate transfer or assignment from the seller at arm's length less any fiscal charges, commission and other sales charges which would be payable by the seller; and
  - (i) the value of any investment which is not quoted, listed or normally dealt in on a stock exchange or over-the-counter market shall be the value considered by the Fund Manager in good faith to be the value thereof;
  - (j) all bills, notes and accounts payable;
  - (k) all administrative and operating expenses, payable and/or accrued (the latter on a day-to-day basis);
  - (l) all known liabilities, present and future, including the amount of any unpaid dividend, contractual obligations for the acquisition of investments or other property or for the payment of money and outstanding payments on any Participations previously redeemed;
  - (m) an appropriate provision for taxes as determined from time to time by the Fund Manager;
  - (n) all other liabilities of the Sub-Fund of whatsoever kind and nature except liabilities represented by Participations referable to the Sub-Fund and reserves (other than reserves authorised or approved by the Fund Manager); and
  - (o) such allowance as the Fund Manager considers appropriate for contingent liabilities.

Notwithstanding the foregoing, the Fund Manager shall be entitled, at its discretion, to apply a method of valuing any investment different from that prescribed hereunder if such method would in its opinion better reflect the fair value of such investment and without

prejudice to the generality of the foregoing, the Fund Manager may rely upon opinions and estimates of any persons who appear to it to be competent to value investment of any type or designation by reason of any appropriate professional qualification or experience of the relevant market. In determining the amount of liabilities the Fund Manager may calculate administrative and other expenses of a regular or recurring nature on an estimated figure for yearly or other periods in advance and accrue the same in equal proportions over any such period.

Assets or liabilities not directly referable to a particular Sub-Fund shall be allocated between the Sub-Funds by the Fund Manager as it considers equitable. For the purposes of determining the Net Asset Value, any assets or liabilities in currencies other than Euro will be converted into Euro at the rate (whether official or otherwise) which the Fund Manager shall in its absolute discretion deem appropriate to the circumstances having regard, inter alia, to any premium or discount which it considers may be relevant and to the costs of exchange at the time of determination of the Net Asset Value.

In addition the foregoing the Fund Manager shall take all necessary differences into account to determine the Net Asset Value.

- 12.2 The Net Asset Value shall be expressed in Euro or, in the case of Sub-Funds valued in another currency, in such currency as may have been designated by the Fund Manager.
- 12.3 The reasonable and equitable decision of the Fund Manager regarding the Net Asset Value, including the determination whether a method of valuation fairly indicates fair market value, and the selection of experts for purposes of assessing the value of the Fund Assets and the Fund Obligations, shall be conclusive and binding upon all Participants.

### **13 Transfer or encumbrance of Participations**

- 13.1 No assignment, sale, transfer, or other disposition of a Participation (whether voluntary or involuntary) shall be valid or effective.
- 13.2 Participations cannot be made subject to any pledge, mortgage, usufruct, charge, lien, retention or other encumbrance (*beperkt recht*) of any nature whatsoever.

### **14 Redemption of Participations**

- 14.1 Participants may only redeem Participations in accordance with the provisions of this Article.
- 14.2 The Fund Manager shall be entitled to redeem all (but not part of) the Participations of any Participant:
  - 14.2.1 if the Participant is dissolved, becomes insolvent, is unable to pay its debts, institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy, insolvency or similar law; or
  - 14.2.2 if in the Fund Manager's reasonable opinion the tax position of the Custodian, the Fund Estate or any of the other Participants is or will become negatively affected due to the tax status or position or any change therein of the relevant Participant or any other circumstance concerning such Participant.
- 14.3 Each Participant shall immediately notify the Fund Manager if any such status, position, change therein or any other circumstance occurs.
- 14.4 Participations may be redeemed on any Dealing Day following written notice given to the Fund Manager (unless otherwise agreed by the Fund Manager) at least forty (40) calendar days in advance of the relevant Dealing Day.
- 14.5 Redemptions shall be effected at a price equal to the Net Asset Value of the relevant Participations on the Dealing Day on which Redemption is effected, less a Redemption charge. The Redemption charge shall be used to satisfy any expenses relating to Redemption and any balance shall accrue to the Fund Manager. The Redemption charge

shall be determined by the Fund Manager but will not exceed 1% of the Redemption proceeds.

- 14.6 Any Redemption request which would bring the value of a Participant's holding below the Minimum Holding will be treated as a request to redeem the entire holding, unless otherwise agreed by the Fund Manager.
- 14.7 The Fund Manager is not obliged to redeem more than 10% of the total Participations in a Sub-Fund in issue on any Dealing Day. Any excess requests will be carried forward to the next Dealing Day at which time they will be given priority over subsequent requests for Redemption.
- 14.8 Unless otherwise agreed by the Fund Manager, the minimum value of Participations which may be the subject of one Redemption request will be € 25,000.
- 14.9 An acknowledgement will be sent to the redeeming Participant within 12 Business Days of the Dealing Day upon which his Redemption request takes effect. A confirmatory detailed confirmation will be despatched as soon as possible containing details of the Redemption Price (estimated to the extent necessary) and the total amount of proceeds (whether estimated or otherwise). A revised confirmation will be issued, if necessary, when the Redemption is confirmed.
- 14.10 The proceeds of Redemption of Participations will, provided no unforeseen circumstances prevent the Fund Manager to liquidate the Fund Assets in time, be despatched within 30 days following Redemption or, if later, receipt of correctly completed documentation.
- 14.11 Participations which are redeemed shall not be held by the Custodian but shall be automatically cancelled.
- 14.12 Immediately upon Redemption the Fund Manager shall procure that the necessary amendments are made to the Register.
- 14.13 Participations may be redeemed against the transfer to the Participant concerned of an equitable proportion of the Fund Investments, with the Fund Manager making such adjustments as it thinks fit to deal with any restrictions on, or inconvenience arising from, particular transfers. Any such transfer and Redemption may be subject to the transferee also assuming an equitable proportion of the Fund Obligations, with such adjustments as the Fund Manager thinks fit. Any such Redemption shall require the prior consent of the Fund Manager which may be given (with or without the imposition of conditions) or withheld at the absolute discretion of the Fund Manager.

## **15 Suspension of dealings**

- 15.1 The Fund Manager may declare a suspension of valuations and the issue and Redemption of Participations in any Sub-Fund for the whole or any part of a period during which:
  - 15.1.1 by reason of the closure of or the suspension of trading on any stock exchange or over-the-counter market or any other reason, circumstances exist as a result of which, in the opinion of the Fund Manager, it is not reasonably practicable for the Fund to dispose of investments or fairly to determine the Net Asset Value; or
  - 15.1.2 a breakdown occurs in any of the means normally employed by the Fund Manager in ascertaining the value of Investments or any other reason or circumstances exists which in the opinion of the Fund Manager means the value of the investments or other assets of the Fund cannot reasonably be ascertained; or
  - 15.1.3 it is not possible to receive remittances in respect of the investments or to make payments pursuant to a Redemption at all or without undue delay.
- 15.2 Any such suspension shall take effect at such time as the Fund Manager shall declare but not later than the close of business on the Business Day next following the declaration and thereafter there shall be no determination of Net Asset Value until the Fund Manager shall declare the suspension at an end except that the suspension shall terminate in any event on the first Business Day on which:
  - 15.2.1 the condition giving rise to the suspension shall have ceased to exist; and

- 15.2.2 no other condition shall exist under which suspension is authorised under the Terms and Conditions.
- 15.3 Each such declaration by the Fund Manager shall be consistent with such official rules and regulations (if any) relating to the subject matter thereof as shall have been promulgated by any authority having jurisdiction over the Fund as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations, the determination of the Fund Manager shall be conclusive.

## **16 Notices, information**

- 16.1 All notices to Participants shall be sent in writing to the (electronic) addresses of Participants stated in the Register. All notices to the Custodian or Fund Manager shall be sent in writing and shall be addressed or directed to the addresses set out in the Information Memorandum.
- 16.2 The Information Memorandum sets forth the information the Fund Manager provides through its website.
- 16.3 The information regarding the Custodian and the Asset Manager which need to be registered mandatory in the Trade Register may be provided to any person at cost price. Upon request any person will be provided with a free copy of the Terms and Conditions.
- 16.4 The License and the Terms and Conditions may be inspected at the office of the Fund Manager. Participants may be provided at cost price with a copy of the License and a copy of the monthly report and notes including as per the end of the preceding month information about the Net Asset Value of each Sub-Fund and the Participations, an overview of the composition of the Fund Investments and the number of outstanding Participations.
- 16.5 The annual accounts of the Fund, the Custodian and the Fund Manager and the semi-annual accounts of the Fund and the Fund Manager may be inspected at the offices of the Fund Manager. Any Participant will provided with a free copy of aforementioned information upon request.
- 16.6 Following the end of each financial year, or more frequently if the Fund Manager in its sole discretion so determines, the Fund Manager shall send a statement to each Participant with information with respect to the Fund. This statement shall contain at least the following information in relation to each Participation of the Participant:
- the Net Asset Value;
  - the number of Participations held by that Participant;
  - the amount of tax withheld from any distributions made by the Fund; and
  - details of the composition of the Fund Investments.
- 16.7 The Fund Manager will inform the Participants of a request to withdraw its License.

## **17 Disclosure of interests**

- 17.1 Interested Parties may buy, hold or deal in any investments upon their own account notwithstanding that the same or similar securities or other investments may be held by or on behalf of the Fund and an Interested Party shall not be liable to account either to the other Interested Parties or to the Fund, the Participants or any other person for any profits or benefits made or derived by or in connection with any such transaction.
- 17.2 An Interested Party may enter into any transaction with any Investee Fund and may be interested in any such contract or transaction (but only on an arm's length basis) and shall not be liable to account either to other Interested Parties or to the Fund, the Participants or any other person for any profits or benefits made or derived by or in connection with any such transaction.
- 17.3 Details of each transaction falling within Articles 17.1 and 17.2 entered into by any of the directors of the Fund Manager shall be provided to Participants in the annual accounts prepared in accordance with Article 19.2.

## **18 Linked Funds**

- 18.1 The Fund Manager may manage or advise other collective investment schemes or investors for the purpose of investment in parallel with, and on substantially similar terms as, the Fund.
- 18.2 The Fund Manager shall, so far as consistent with applicable fiscal, legal and regulatory requirements, allocate investment opportunities in proportion to the funds respectively committed to the Fund and such Linked Funds and any such co-investment shall be made on the same financial terms as the acquisition by the Fund.
- 18.3 The Fund Manager may make arrangements with Linked Funds on such terms as it reasonably thinks fit to share income, costs, expenses and liabilities relating to such investments with the Linked Funds in proportion to the amounts respectively invested, to equate the rate of return earned from any investment and make such other arrangements as it thinks fit.

## **19 Accounting and reporting**

- 19.1 The financial year of the Fund shall coincide with the calendar year.
- 19.2 The Fund Manager shall prepare annual accounts, consisting of a balance sheet and an income statement for each Sub-Fund and explanatory notes thereto. The accounts of the Fund shall be signed by all members of the board of directors of the Fund Manager. Should one (1) or more signatures be missing, this shall be disclosed, stating reasons. The annual accounts shall be prepared in accordance with the Netherlands Civil Code.
- 19.3 The Fund Manager shall appoint an independent auditor, as referred to in Article 2:393(1) of the Netherlands Civil Code, to audit the annual accounts of the Fund and report on the Net Asset Value(s) as determined by the Fund Manager. Such person shall report on his audit to the Fund Manager, shall set out the results of his audit in a certificate and shall be entitled to receive reasonable compensation for the services rendered.
- 19.4 The Fund Manager shall with the annual accounts cause the Administrator to send to each Participant a statement of the Investments acquired, sold or otherwise disposed of during such period and a report by the Fund Manager expressing its opinion on the value of the Investments held at the end of the financial year.
- 19.5 The Fund Manager shall prepare the annual accounts within 4 months following the end of each financial year of the Fund.
- 19.6 Annually within 9 weeks after the end of the first half of a financial year, the Fund Manager will prepare the semi annual accounts of the Fund. The semi annual accounts consist of a report of the Fund Manager as well as the semi annual accounts. Article 19.2 shall apply mutatis mutandis to the semi annual accounts.

## **20 Distributions**

- 20.1 The Fund Manager shall have sole discretion whether to distribute any income of the Fund or whether to retain it within the Fund. Any sums which it determines to distribute shall be paid to Participants in the relevant Sub-Fund, pro rata to their Participations.
- 20.2 Distributions in cash shall be made by credit to such bank account as the Participant may agree with the Fund Manager. Cash Equivalents and Securities shall be transferred into the name of the relevant Participant.
- 20.3 Any announcement of payment of distributions pursuant to this Article 20 shall be given to Participants in accordance with Article 16.

## **21 Tax aspects**

- 21.1 The Fund Manager shall use reasonable endeavours to assist Participants in obtaining the benefit of any tax exemptions applicable to investments by the Fund and any tax refunds available in respect of tax withheld from sums receivable by the Fund. The Fund Manager shall not be obliged to seek any exemption or refund where the effort or expense would be disproportionate to the sums likely to be recovered. If the Fund Manager thinks fit, the

- amount distributable to any Participant may take into account the availability of tax exemptions or refunds attributable to him and to the rate of withholding applicable to him.
- 21.2 Each Participant shall promptly provide all information required for the purpose of Article 21.1 and do all such acts and things as the Fund Manager or the Custodian may reasonably require in connection therewith.
- 21.3 Each Participant shall indemnify the Fund and the other Participants for any taxes incurred or suffered by the Fund or any other Participant as a result of his failure to comply with Article 21.2, his tax residence or status or otherwise resulting from his participation in the Fund.

## **22 Amendments to the Terms and Conditions**

- 22.1 The Terms and Conditions may be amended at the joint proposal of the Fund Manager and the Custodian without any further consent of the Participants being required provided the amendment does not involve: (i) a change in the Investment Objectives; (ii) an increase of the fees of the Fund Manager; (iii) or any negative change in the Terms and Conditions relating to the Redemption of Participations which require the prior consent of the Participants through an Ordinary Resolution.
- 22.2 The Terms and Conditions cannot be amended at the request of the Participants.
- 22.3 Notice will be sent by the Fund Manager and the Custodian to all Participants to inform the Participants of the text of a proposed amendment of the Terms and Conditions at least thirty (30) calendar days before the day on which the amendment shall come into effect.
- 22.4 Any change in the Terms and Conditions which causes a reduction in the Participants' rights or security or imposes costs upon Participants does not become effective until three (3) months after the date (of approval) of the change and during this period Participants shall be entitled to redeem their Participations under the then existing conditions. In particular, the provisions of Article 14 shall apply to any such Redemption.
- 22.5 Upon amendment of the Terms and Conditions, the Fund Manager shall inform the Participants about the revised Terms and Conditions.

## **23 Duration, termination and winding up**

- 23.1 The Fund shall be of indefinite duration.
- 23.2 The Fund shall be terminated on the bankruptcy, dissolution or liquidation of the Fund Manager unless the appointment of a replacement Fund Manager is approved by Ordinary Resolution.
- 23.3 The Fund may be terminated at any time:
- 23.3.1 with the sanction of a Special Resolution, upon the Fund Manager committing fraud, illegal acts, gross negligence (*grove schuld*), wilful default (*opzet*) or material breach of these Terms and Conditions which is not remedied within a reasonable period of time;
- 23.3.2 with the agreement of the Fund Manager and the sanction of a Special Resolution; or
- 23.3.3 on not less than three month's notice by the Fund Manager to the Participants.
- 23.4 The Fund Manager may (with the consent of an Ordinary Resolution) by notice in writing to the Participants, terminate the Fund at any time if in its reasonable opinion it would be impracticable, unlawful or inadvisable to continue.
- 23.5 Upon termination of the Fund or a Sub-Fund in accordance with this Article, or dissolution, no further business shall be conducted for the Fund or that Sub-Fund (as the case may be), except for such actions as shall be necessary for the winding up of the affairs of the Fund or that Sub-Fund and the distribution of the assets of the Fund which shall be effected by the Fund Manager.
- 23.6 During the liquidation period the Terms and Conditions shall, to the extent possible, remain in full force and effect.
- 23.7 The balance left after the liquidation shall be distributed in accordance with Article 20. Notice that distributions are to be made payable to the Participants and the composition of the distributions or collections shall be given in accordance with the provisions of Article

16. The Fund Manager shall duly render accounts to the Participants before making any distributions.

- 23.8 The Fund Manager shall prepare liquidation accounts, which shall be accompanied by a certificate of the person referred to in Article 19.3. Approval of those liquidation accounts by a meeting of Participants shall, upon approval by Special Resolution, constitute a discharge of the Custodian and the Fund Manager.

## **24 Meetings of Participants**

- 24.1 The Fund Manager may, as often as it deems necessary in the interest of the Participants, convene a meeting of Participants or of Participants in any Sub-Fund. The meetings will be held in Amsterdam or another place to be determined by the Fund Manager. Notice for a meeting will be given in accordance with Article 16 at least fourteen (14) days prior to the meeting and will state the date, time, place and agenda for the meeting.
- 24.2 Participants wishing to attend a meeting must notify the Fund Manager thereof in writing no later than five (5) Business Days prior to the meeting. Participants which have so notified the Fund Manager are entitled to be heard at the meeting and to exercise their voting rights.
- 24.3 The Fund Manager shall appoint a chairman and a secretary. The chairman shall be responsible for determining the procedure to be adopted for the conduct of any meeting. The secretary shall be responsible for the preparation of minutes of the meeting.
- 24.4 Each Participation gives an entitlement to one vote.

## **25 Applicable law, competent court**

The Terms and Conditions shall be governed by the laws of The Netherlands. The competent courts of Amsterdam and its appellate courts shall have exclusive jurisdiction to decide on a dispute between the Fund Manager and/or the Custodian and/or the Participants or the Participants' successors arising from the Terms and Conditions.