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## CONFIDENTIAL OFFERING MEMORANDUM

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April 2022

**BLUEORCHARD FINANCIAL INCLUSION FUND SCA SICAV-RAIF**  
*Société d'investissement à capital variable – fonds d'investissement alternatif réservé*

Approved by the Fund		Acknowledged by the AIFM	
			
Maria Teresa Zappia Name: Title: Manager	Annemarie Arens Name: Title: Manager	Tsira Zhorzholiani Name: Title: Conducting Officer 11/04/2022	Fabien Pietroforte Name: Title: Conducting Officer

APPLICATIONS FOR SUBSCRIPTION ARE RESERVED TO ELIGIBLE INVESTORS WHO, ON THE BASIS OF THIS OFFERING MEMORANDUM, THE ARTICLES AND THE COMMITMENT AGREEMENTS, HAVE MADE THEIR OWN ASSESSMENT OF THE CONDITIONS OF THEIR PARTICIPATION IN THE FUND. ACCORDINGLY, IT IS THE RESPONSIBILITY OF PARTICIPATING INVESTORS TO DETERMINE WHETHER THEIR RIGHTS AND OBLIGATIONS AS INVESTORS ARE SUITABLE FOR THEM.

**BLUEORCHARD FINANCIAL INCLUSION FUND SCA SICAV-RAIF IS ESTABLISHED AS A LUXEMBOURG RESERVED ALTERNATIVE INVESTMENT FUND. AS SUCH, THE FUND IS NOT AND SHALL NOT BE SUPERVISED BY THE LUXEMBOURG FINANCIAL SUPERVISORY AUTHORITY, THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER (THE "CSSF") NOR BY ANY OTHER SUPERVISORY AUTHORITY IN LUXEMBOURG AND THIS MEMORANDUM HAS NOT BEEN REVIEWED OR APPROVED BY THE CSSF NOR BY ANY OTHER SUPERVISORY AUTHORITY IN LUXEMBOURG.**

**IT IS NOT INTENDED TO SUBMIT THIS MEMORANDUM TO ANY REGULATOR OTHER THAN IN THE CONTEXT OF A MARKETING NOTIFICATION IN ACCORDANCE WITH ARTICLES 31 AND 32 OF THE AIFM DIRECTIVE AND ARTICLES 29 AND 30 OF THE 2013 ACT.**

**THIS MEMORANDUM IS A CONFIDENTIAL DOCUMENT THAT IS NOT TO BE MADE AVAILABLE TO THIRD PARTIES AND IN PARTICULAR MUST NOT BE MADE AVAILABLE TO THE PUBLIC NOR BE MADE AVAILABLE IN JURISDICTIONS WHERE THIS WOULD BE CONTRARY TO LOCAL LAWS AND REGULATIONS.**

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

This Memorandum is submitted on a confidential basis by BlueOrchard Invest S.à r.l. (the “**General Partner**”) to a number of Eligible Investors who have expressed an interest in investing in BlueOrchard Financial Inclusion SCA SICAV-RAIF, a Luxembourg reserved alternative investment fund (*fonds d'investissement alternatif réservé*) established in the form of an investment company with variable capital (*société d'investissement à capital variable*) and organised as a partnership limited by shares (*société en commandite par actions*) in accordance with the 2016 Act (the “**Fund**”). Unless otherwise defined, capitalised terms used throughout this Memorandum will have the meanings ascribed to such terms in the Section "Definitions".

This Memorandum has been prepared solely for the consideration of prospective Eligible Investors in the Fund and is circulated to a limited number of Eligible Investors on a confidential basis solely for the purpose of evaluating an investment in the Fund. Notwithstanding the preceding, the confidentiality obligations of the Eligible Investors shall be construed in accordance with statutory and regulatory requirements that may, on occasions, require disclosure of the terms contained herein to governmental authorities or other public bodies. This Memorandum supersedes and replaces any other information related to the contents hereof provided by the Fund and its respective representatives and agents in respect of the Fund, provided however that this Memorandum shall be read alongside the other Fund Documents. However, the Memorandum is provided for information only for the purpose of assisting prospective Eligible Investors to take an investment decision but is not intended to be and must not alone be taken as the basis for an investment decision. By accepting this Memorandum and any other information supplied to potential Investors by the General Partner, the recipient agrees that such information is confidential. Neither it nor any of its employees or advisors will use the information for any purpose other than for evaluating an investment in the Fund or divulge such information to any other party and acknowledge that this Memorandum may not be photocopied, reproduced or distributed to others without the prior written consent of the Fund. Each recipient hereof by accepting delivery of this Memorandum agrees to keep confidential the information contained herein and to return it and all related materials to the Fund if such recipient does not undertake to purchase any of the Securities. The information contained in the Memorandum and any other documents relating to the Fund may not be provided to persons (other than professional advisors) who are not directly concerned with any Investor's decision regarding the investment offered hereby.

By accepting this Memorandum, potential Investors in the Fund are not to construe the contents of this Memorandum or any prior or subsequent communications from the Fund, the General Partner, the Service Providers or any of their respective officers, members, employees, representatives or agents as investment, legal, accounting, regulatory or tax advice. Prior to investing in the Securities, potential Investors should conduct their own investigation and analysis of an investment in the Fund and consult with their legal advisors and their investment, accounting, regulatory and tax advisors to determine the consequences of an investment in the Securities and arrive at an independent evaluation of such investment, including the applicability of any legal sales or investment restrictions without reliance on the Fund, the Service Providers or any of their respective officers, members, employees, representatives or agents. Neither the Fund, the General Partner, the Service Providers nor any of their respective officers, members, employees, representatives or agents accepts any responsibility or liability whatsoever for the appropriateness of any potential Investors investing in the Fund.

Notwithstanding any other statement in this Memorandum, each Investor may disclose to any and all persons, without limitation of any kind, the US federal and state income and franchise tax treatment and structure of the Fund, the Securities and investments; provided that the foregoing does not constitute an authorization to disclose information identifying the Fund, the General Partner and their respective affiliates, advisers, investors, directors, officers, employees and principals, the Investors or any parties to transactions engaged in by the Fund or (except to the extent relating to such tax structure or tax treatment) any non-public commercial or financial information.



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

The Articles, the Depositary Agreement, the Central Administration Agreement, the AIFM Agreement, the Investment Management Agreement, the Commitment Agreement and related documentation are described in summary form herein; these descriptions do not purport to be complete and each such summary description is subject to, and qualified in its entirety by reference to, the actual text of such documents, including any amendment thereto.

## **Marketing**

No action has been taken which would permit a public offering of the Securities in any jurisdiction where action for that purpose would be required. The Memorandum and any other documents relating to the Fund do not constitute an offer or solicitation in any jurisdiction in which an offer or solicitation is not authorised, or in which the person making the offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such an offer or solicitation. Any representation to the contrary is unlawful. No action has been taken by the Fund that would permit a public offering of Securities or possession or distribution of information in any jurisdiction where action for that purpose is required.

**THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE OR POLITICAL SUBDIVISION OF THE UNITED STATES, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY US PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT), EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ANY APPLICABLE US STATE SECURITIES LAWS. NEITHER THE FUND NOR ANY OF ITS CONSTITUENT ENTITIES (THE "ENTITIES") HAVE REGISTERED NOR DO THEY INTEND TO REGISTER UNDER THE UNITED STATES INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "INVESTMENT COMPANY ACT") AS AN INVESTMENT COMPANY IN RELIANCE ON THE EXEMPTION FROM SUCH REGISTRATION PURSUANT TO SECTION 3(C)(7) THEREUNDER AND CERTAIN INTERPRETATIONS OF SECTION 7(D) OF THE INVESTMENT COMPANY ACT BY THE STAFF OF THE US SECURITIES AND EXCHANGE COMMISSION.**

**ACCORDINGLY, THE SECURITIES HEREBY ARE BEING OFFERED AND SOLD ONLY:**

- (I) TO PERSONS THAT ARE (A) NOT "US PERSONS", AS SUCH TERM IS DEFINED IN REGULATION S UNDER THE US SECURITIES ACT, (B) "NON-UNITED STATES PERSONS" AS DEFINED IN CFTC RULE 4.7 AND (C) NOT US RESIDENTS (AS INTERPRETED BY THE STAFF OF THE SEC FOR THE PURPOSES OF THE US INVESTMENT COMPANY ACT) (ELIGIBLE NON-US INVESTORS) IN OFFSHORE TRANSACTIONS IN RELIANCE ON REGULATION S UNDER THE US SECURITIES ACT; AND;**
- (II) TO PERSONS THAT ARE (A) "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501 OF REGULATION D UNDER THE US SECURITIES ACT) AND (B) EITHER (X) "QUALIFIED PURCHASERS" (WITHIN THE MEANING OF SECTION 2(A)(51) OF THE US INVESTMENT COMPANY ACT) OR (Y) "KNOWLEDGEABLE EMPLOYEES" (AS DEFINED IN RULE 3C-5 UNDER THE US INVESTMENT COMPANY ACT) (ELIGIBLE US INVESTORS).**

**ALL PERSONS INVESTING IN THE FUND MUST REPRESENT THAT EITHER:**

- (I) (A) IT IS AN ELIGIBLE NON-US INVESTOR; (B) NONE OF THE FUNDS USED BY THE INVESTOR TO EFFECT ITS INVESTMENT HAVE BEEN OBTAINED FROM PERSONS OTHER THAN ELIGIBLE NON-US INVESTORS; (C) IT WILL NOT TRANSFER ITS SECURITIES IN VIOLATION OF THE RESTRICTIONS ON TRANSFER SET FORTH IN THIS DOCUMENT OR THE FUND'S CONSTITUENT DOCUMENTS; (D) IT WILL NOTIFY THE FUND IMMEDIATELY IF IT SHOULD AT ANY TIME BECOME A PERSON OTHER THAN AN ELIGIBLE NON-US INVESTOR; (E) IT WAS NOT SOLICITED TO PURCHASE, AND DID NOT PLACE ANY ORDER TO PURCHASE, SECURITIES WHILE PRESENT IN THE UNITED STATES; AND (F) IT CONFIRMS THAT IT HAS NOT ENTERED AND WILL NOT ENTER INTO ANY CONTRACTUAL ARRANGEMENT WITH ANY DISTRIBUTOR (AS DEFINED IN REGULATION S) WITH RESPECT TO ANY DISTRIBUTION OF THE SECURITIES; OR**
- (II) (A) IT IS AN ELIGIBLE US INVESTOR; (B) IT WILL NOT TRANSFER ITS SECURITIES IN VIOLATION OF THE RESTRICTIONS ON TRANSFER SET FORTH IN THE CONSTITUENT DOCUMENTS; AND (C) IT WILL NOTIFY THE FUND IMMEDIATELY IF IT SHOULD AT ANY TIME BECOME A PERSON OTHER THAN AN ELIGIBLE US INVESTOR.**

**THE FUND ANTICIPATES THAT EACH OF THE AIFM AND THE MANAGER IS EXEMPT FROM REGISTRATION AS A "COMMODITY POOL OPERATOR" WITH THE CFTC PURSUANT TO THE EXEMPTION UNDER CFTC RULE 4.13(a)(3), WHICH EXEMPTION MAY BE GRANTED WITH RESPECT TO POOLS WHOSE PARTICIPANTS SATISFY CERTAIN INVESTOR SOPHISTICATION STANDARDS AND WHICH TRADE COMMODITY INTERESTS IN DE MINIMIS AMOUNTS. ACCORDINGLY, AN OFFERING MEMORANDUM FOR THE FUND IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE CFTC. THE CFTC DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE CFTC HAS NOT REVIEWED OR APPROVED THIS MEMORANDUM OR ANY OFFERING MEMORANDUM FOR ANY POOL IN RELATION TO THE FUND. NEITHER THE AIFM NOR THE MANAGEMENT COMPANY IS REQUIRED TO DELIVER TO INVESTORS A DISCLOSURE DOCUMENT OR CERTIFIED ANNUAL REPORTS THAT ARE OTHERWISE REQUIRED TO BE DELIVERED PURSUANT TO THE UNITED STATES COMMODITY EXCHANGE ACT OF 1936, AS AMENDED (THE "US COMMODITY EXCHANGE ACT"), WHICH WOULD CONTAIN CERTAIN DISCLOSURES REQUIRED THEREBY THAT MAY NOT BE INCLUDED HEREIN OR IN THE REPORTS PROVIDED TO INVESTORS BY THE FUND. NEITHER THE AIFM NOR THE MANGER WILL REGISTER WITH THE CFTC AS A COMMODITY TRADING ADVISER WITH RESPECT TO THE FUND PURSUANT TO AN EXEMPTION.**

**THE SECURITIES AND THE FUND HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE REGULATORY AUTHORITY OF ANY US STATE OR BY THE US SECURITIES AND EXCHANGE COMMISSION OR THE CFTC, NOR HAS ANY OTHER REGULATORY AUTHORITY OR COMMISSION PASSED JUDGMENT UPON THE ACCURACY OR ADEQUACY OF THE RELEVANT FUND DOCUMENTS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT WITH THE CONSENT OF THE GENERAL PARTNER AND AS PERMITTED UNDER THE US SECURITIES ACT AND THE INVESTMENT COMPANY ACT. PROSPECTIVE INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS**

## **INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

The Fund is an externally managed AIF managed by BlueOrchard Asset Management (Luxembourg) S.A. as the Fund's external AIFM (the "AIFM"). The AIFM is authorised in Luxembourg as an AIFM under the 2013 Act. The AIFM may therefore, and reserves the right to, market the Fund's Securities to Professional Investors in Luxembourg. Furthermore, in accordance with article 30 of the 2013 Act, the AIFM may apply with the CSSF for the authorisation to market the Fund's Securities to Professional Investors in any other European Economic Area ("EEA") Member State.

The Securities may not be offered, sold or otherwise made available to any retail investor in any EEA Member State. For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU ("MiFID II") or (ii) a customer within the meaning of Directive 2002/92/EC, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II. Consequently, no key information document required by Regulation (EU) No 1286/2014, as amended (the "PRIIPs Regulation") for offering or selling the Securities or otherwise making them available to retail investors in EEA Member States has been prepared. Offering or selling the Securities or otherwise making them available to any retail investor in any EEA Member State may therefore be unlawful under the PRIIPs Regulation.

Certain statements contained in this Memorandum are forward-looking statements. These forward-looking statements are based on current expectations, estimates and projections about the markets in which the Fund will operate, and the beliefs and assumptions of the Fund. Words such as "expects", "anticipates", "should", "intends", "plans", "believes", "seeks", "estimates", "forecasts", "projects", variations of such words and similar expressions are intended to identify such forward-looking statements. These statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions which are difficult to predict. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. Among the factors that could cause actual results to differ materially are the general economic climate, inflationary trends, competition and the supply of and demand for Investments, political instability, interest rate levels, the availability of financing, changes in tax and corporate regulations, risk of policy formation and implementation, and other risks associated with the ownership and acquisition of Investments, including changes in the legal or regulatory environment or that operation costs may be greater than anticipated.

**An investment in the Securities involves significant risks and there can be no assurance or guarantee as to positive return on any of the Fund's Investments or that there will be any return on invested capital.** Potential Investors should in particular refer to Section 25 of this Memorandum. The investment objectives of the Fund are based on a number of assumptions which the Fund believes reasonable, but there is no assurance that the investment objectives will be realised.

The General Partner has taken all reasonable care to ensure that the information contained in this Memorandum is accurate as of the date of this Memorandum (or such other date as stated herein). Other than as described below, the Fund, the General Partner and the AIFM have no obligation to update this Memorandum.

Under no circumstances should the delivery of this Memorandum, irrespective of when it is made, create an implication that there has been no change in the affairs of the Fund since such date. This Memorandum may be updated and amended by a supplement and where such supplement is prepared this Memorandum will be read and construed with such supplement.

This Memorandum will be updated in accordance with Luxembourg Law.

No person has been authorised to give any information or to make any representation concerning the Fund or the offer of the Securities other than the information contained in this Memorandum and any

other documents relating to the Fund, and, if given or made, such information or representation must not be relied upon as having been authorised by the Fund or any Service Provider.

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

### **Data protection**

For the purpose of this Memorandum, **Data Protection Legislation** means any applicable law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding instrument which notably implements the Directive (95/46/EC) and as from 25 May 2018 Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “**GDPR**”) as such legislation and guidance may be amended, replaced or repealed from time to time. The terms “**personal data**”, “**data subject**”, “**data controller**” and “**process**” shall have their meanings given to them as set out in Data Protection Legislation.

In terms of Data Protection Legislation, the Fund is acting as data controller in relation to any personal data the Investor provides to the Fund. The Investor, the Fund, the AIFM, the Depositary and the Administrative Agent shall comply with all applicable Data Protection Legislation when processing personal data arising out of the Subscription Agreement.

To the extent the Investor is an individual, the Investor is informed and acknowledges that the documentation and information the Investor provides in relation to this Memorandum and its Subscription Agreement will be processed in accordance with the privacy notice as attached as Schedule 1 (the “**Privacy Notice**”).

Where personal data is shared by the Investor on individuals relating to such Investor (including beneficial owners, contact persons, etc.), with the Fund, the AIFM, the Depositary and the Administrative Agent (e.g. information relating to its representatives, contact persons, directors, trustees, settlors and beneficial owners), the Investor shall ensure such disclosure is in compliance with all Data Protection Legislation and that there is no prohibition or restriction which could:

- prevent or restrict it from disclosing or transferring the personal data to Fund, the AIFM, the Depositary and the Administrative Agent;
- prevent or restrict the Fund, the AIFM, the Depositary and the Administrative Agent from disclosing or transferring personal data to any of their affiliates, subcontractors, vendors, credit reference agencies and competent authorities pursuant to its obligations under its Subscription Agreement; and
- prevent or restrict the Fund, the AIFM, the Depositary and the Administrative Agent or any of their affiliates and subcontractors from processing the personal data for the purposes set out in its Subscription Agreement.

If an Investor shares personal data on individuals relating to such Investor with the Fund, the AIFM, the Depositary and the Administrative Agent, the Investor shall ensure that it has provided a fair processing notice informing the data subjects of the Fund’s, the AIFM’s, the Depositary’s and the Administrative Agent’s processing of such personal data as described in the Privacy Notice, including notifying data subjects of any updates to the Privacy Notice. Where required, the Investor shall procure the necessary consents from data subjects to the processing of Personal Data as described in the Privacy Notice.

The Investor who shares personal data relating to such Investor with the Fund, the AIFM, the Depositary and the Administrative Agent shall indemnify and hold the Fund, the AIFM, the Depositary and the

Administrative Agent harmless for and against all direct and indirect damages and financial consequences arising from any breach of these warranties.

### **Disclosure of identity**

The General Partner, the AIFM, the Administrative Agent or the Depositary may be required by law, regulation or government authority or where it is in the best interests of the Fund to disclose information in respect of the identity of the Investors.

The Fund is required under Luxembourg law to (i) obtain and hold accurate and up-to-date information (i.e. full names, nationality/ies, date and place of birth, address and country of residence, national identification number, nature and extent of the interest in the Fund) about its beneficial owners (as such term is defined under the Luxembourg act of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the “**AML Act**”) and relevant supporting evidence and (ii) file such information and supporting evidence with the Luxembourg Register of beneficial owners (the “**RBO**”) in accordance with the Luxembourg act of 13 January 2019 creating a Register of beneficial owners, as amended from time to time (the “**RBO Act**”).

The attention of Investors is drawn to the fact that the information contained in the RBO (save for the national identification number and address of the beneficial owner) is available to the public, unless a limited access exemption is applied for and granted. Luxembourg national authorities and professionals (as referred to in the AML Act) may request that the Fund gives them access to the information on the beneficial owner(s) of the Fund (as well as its legal owners). Investors, their direct or indirect (share)holders who are natural persons, the natural person(s) who directly or indirectly control(s) the Fund, the natural person(s) on whose behalf Investors may act, may qualify as beneficial owner(s), and beneficial ownership may evolve or change from time to time in light of the factual or legal circumstances. Beneficial owners are under a statutory obligation to provide to the Fund all relevant information about them as referred to above. Non-compliance with this obligation may expose beneficial owners to criminal sanctions.

Each Investor will be required in its Commitment Agreement to agree that the Fund and any of its services providers cannot incur any liability for any disclosure about a beneficial owner made in good faith to comply with Luxembourg laws.

Each Investor will be required in its Commitment Agreement to make such representations and warranties that it will promptly provide upon request, all information, documents and evidence that the Fund may require to satisfy its obligations under any applicable laws and in particular the RBO Act.

## Directory

<b>Fund</b>	<b>BlueOrchard Financial Inclusion Fund SCA SICAV-RAIF</b> 2 rue d'Alsace, L-1122 Luxembourg, Grand Duchy of Luxembourg
<b>General Partner</b>	<b>BlueOrchard Invest, S.à r.l.</b> 1, rue Goethe, L-1637 Luxembourg, Grand Duchy of Luxembourg
<b>Board of Managers of the General Partner</b>	Mrs. Maria Teresa Zappia Mrs. Annemarie Arens Mrs. Elisabeth Sherk
<b>AIFM</b>	<b>BlueOrchard Asset Management (Luxembourg) S.A.</b> 1, rue Goethe, L-1637 Luxembourg, Grand Duchy of Luxembourg
<b>Investment Manager</b>	<b>BlueOrchard Finance Ltd.</b> 233, Seefeldstrasse, CH-8008 Zurich, Switzerland
<b>Administrative Agent</b>	<b>European Fund Administration S.A. (EFA), Luxembourg</b> 2 rue d'Alsace, L-1122 Luxembourg, Grand Duchy of Luxembourg
<b>Depository</b>	<b>Banque de Luxembourg (BDL)</b> 14 Boulevard Royal, L-2449 Luxembourg, Grand Duchy of Luxembourg
<b>Auditors</b>	<b>PricewaterhouseCoopers, Luxembourg</b> 2, rue Gerhard Mercator, L-2182 Luxembourg, Grand Duchy of Luxembourg
<b>Legal Advisers (as to the laws of Luxembourg only)</b>	<b>Linklaters LLP</b> 35 avenue John F. Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg

## DEFINITIONS

<b>1915 Act</b>	means the Luxembourg act of 10 August 1915 concerning commercial companies, as may be amended from time to time;
<b>1993 Act</b>	means the Luxembourg act of 5 April 1993 on the financial sector, as may be amended from time to time;
<b>2010 Act</b>	means the Luxembourg act of 17 December 2010 relating to undertakings for collective investment, as may be amended from time to time;
<b>2013 Act</b>	means the Luxembourg act of 12 July 2013 implementing the AIFM Directive, as may be amended from time to time;
<b>2016 Act</b>	means the Luxembourg act of 23 July 2016 relating to RAIFs, as may be amended from time to time;
<b>Administrative Agent</b>	means European Fund Administration S.A (EFA), Luxembourg, in its capacity as administrative agent, paying agent, domiciliary agent and registrar and transfer agent of the Fund;
<b>Administrative Agent Fee</b>	means the administrative agent fee to which the Administrative Agent is entitled out of the Fund Total Assets, in accordance with Section 5.9d;
<b>Advisory Committee</b>	has the meaning set out in Section 5.7a of this Memorandum;
<b>Affiliate</b>	means: <ul style="list-style-type: none"><li>(a) in the case of a company:<ul style="list-style-type: none"><li>i. any company which is its direct or indirect holding company or subsidiary or a direct or indirect subsidiary of that holding company; or</li><li>ii. a company (or a direct or indirect subsidiary of a company) or other entity which controls or is controlled by the person concerned;</li></ul></li><li>(b) in the case of an individual, the spouse or direct descendant and ascendants of any kind, and any company directly or indirectly controlled by such person and his associates within the meaning of paragraph (a)(ii) of this definition; or</li><li>(c) in the case of an entity other than a company, the members and any company or entity directly or indirectly controlled by such person and his associates within the meaning of paragraph (a)(ii) of this definition, except in, all cases, any company or entity in which the Fund holds an Investment;</li></ul>
<b>Aggregate Commitments</b>	<b>Fund</b> means the total Commitments of Investors to the Fund;
<b>AIF</b>	means an alternative investment fund within the meaning of the AIFM Directive;
<b>AIFM</b>	means BlueOrchard Asset Management (Luxembourg) S.A. in its capacity as alternative investment fund manager of the Fund within the meaning of the

<b>AIFM Agreement</b>	AIFM Directive; means the alternative investment fund manager services agreement entered into between the Fund and the AIFM, as may be amended from time to time;
<b>AIFM Directive</b>	means Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as may be amended from time to time;
<b>AIFM Rules</b>	means the AIFM Directive, the AIFMD-CDR, the 2013 Act as well as any implementing measures of the AIFM Directive or the 2013 Act;
<b>AIFMD-CDR</b>	means Commission Delegated Regulation 231/2013 of 19 December 2012 supplementing the AIFM Directive with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision, as may be amended from time to time;
<b>Alternative Investment Vehicle</b>	has the meaning set out in Section 4.9 of this Memorandum;
<b>Articles</b>	means the articles of association of the Fund, as may be amended and restated from time to time;
<b>Auditor</b>	means PricewaterhouseCoopers, Luxembourg or such other auditor as appointed by the Fund from time to time;
<b>Benefit Plan Investors</b>	has the meaning set out in Section 25.38 of this Memorandum;
<b>BlueOrchard Parties</b>	means the General Partner, the AIFM, the Investment Manager, their Affiliates, each of their directors, managers and officers and employees (other than non-executive independent directors and managers of any of them);
<b>Business Day</b>	means a day on which banks are generally open for business in Luxembourg (excluding Saturdays, Sundays and public holidays);
<b>Call Notice or Drawdown Notice</b>	means a notice whereby the Fund informs the Investors of a drawdown and requests the relevant Investors to make a Capital Contribution to the Fund against an issue of Securities in accordance with the provisions of this Memorandum;
<b>Capital Call</b>	means call of capital by the General Partner, pursuant to a Drawdown Notice;
<b>Capital Commitment or Commitment</b>	means the amount committed by an Investor to Fund (and whether or not such amount has been advanced in whole or in part and whether or not it has been repaid to the Investor in whole or in part), which must be at least equal to the minimum commitment, as set out in the Commitment Agreement duly executed by such Investor;
<b>Capital Contribution</b>	means the cash contributed by an Investor to the Fund (whether against the issuance of Securities or otherwise);



<b>Carried Interest</b>	has the meaning set out in Section 14.1 of this Memorandum;
<b>Cash and Cash Equivalent</b>	means cash or cash equivalents and in each case denominated in convertible currencies and rated not less than AA or Aa1 by Standard & Poor's and Moody's, respectively, including, inter alia and without limitation, investments in units of money market funds, time deposits and regularly negotiated money market instruments the remaining maturity of which is less than twelve (12) months, treasury bills and bonds issued by OECD member countries or their local authorities or by supranational institutions and organisations with European Union, regional or worldwide scope as well as highly rated governmental bonds admitted to official listing on a stock exchange or dealt on a regulated market, issued by first-class issuers and highly liquid;
<b>Cause</b>	means any of: <ul style="list-style-type: none"> <li>(a) any act by the General Partner, the AIFM or the Investment Manager which has been determined by a final judgment of a competent court to constitute fraud; or</li> <li>(b) any act or omission of the General Partner, the AIFM or the Investment Manager which has been determined by a final judgment of a competent court to constitute wilful default, a wilful illegal act, reckless disregard of their duties, a material breach of applicable laws and licenses, any criminal or corrupt; or</li> <li>(c) any act or omission directly attributable to the General Partner, the AIFM or the Investment Manager which act or omission has been determined by a final judgment of a competent court to constitute gross negligence in connection with the performance of its duties for the Fund which has not been rectified within 45 Business Days of written notice having been served on the General Partner by the Advisory Committee requiring such remedy; or</li> <li>(d) a determination by a final judgment of a competent court that the General Partner, the AIFM or the Investment Manager has committed a material breach of the Articles or this Memorandum and provided that where such breach is capable of remedy, it has not been remedied within 45 Business Days of written notice having been served on the General Partner by the Advisory Committee requiring such remedy; or</li> <li>(e) the entry into insolvency of the General Partner, the AIFM or the Investment Manager; or</li> <li>(f) a Change of Control Event has occurred and the Shareholders do not approve by Shareholders 50% Consent such Change of Control Event within 6 months, which shall be notified by the General Partner to the Shareholders as soon as having occurred;</li> </ul>
<b>Central Administration Agreement</b>	means the central administration agreement entered into between the Fund and the Administrative Agent, as may be amended from time to time;
<b>Change of Control Event</b>	means a BlueOrchard Party ceasing to own (directly or indirectly) at least seventy percent (70%) of voting shares in the General Partner or the Investment Manager;
<b>Circular 02/77</b>	means CSSF Circular 02/77 on the protection of investors in case of NAV calculation error and correction of the consequences resulting from non-compliance with the investment rules applicable to undertakings for

	collective investment, as may be amended from time to time;
<b>Class</b>	has the meaning set out in Section 2.1 of this Memorandum;
<b>Closing</b>	means any date on which Investors may commit to subscribe for Securities in the Fund;
<b>Closing Date</b>	means the date of the relevant Closing;
<b>Code</b>	means the United States Internal Revenue Code of 1986, as amended;
<b>Commitment Agreement</b>	means the form of subscription to be executed by a potential Investor pursuant to which, where accepted by the Fund, the Investor will commit to subscribe Shares;
<b>Commitment Method</b>	has the meaning set out in Section 25.36 of this Memorandum;
<b>Compensation Amount</b>	has the meaning set out in Section 7.1 of this Memorandum;
<b>Conflicts of Interest Policy</b>	has the meaning set out in Section 23.1 of this Memorandum;
<b>Control</b>	means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership, directly or indirectly of shares, equity rights or voting rights or other interests of any such entity and/or by contract and provided that if an entity or person holds more than 50% of the shares, equity or voting rights of another entity, then such person or entity shall be deemed to Control the first entity or person. The terms “Controls” and “Controlled” shall be interpreted accordingly;
<b>CSSF</b>	means the <i>Commission de Surveillance du Secteur Financier</i> , the Luxembourg supervisory authority for the financial sector;
<b>CFTC</b>	means the U.S. Commodity Futures Trading Commission;
<b>CFC</b>	has the meaning set out in Section 17.5 of this Memorandum;
<b>Custodiable Asset</b>	means assets that may be held in custody in accordance with the AIFM Rule;
<b>DAC</b>	has the meaning set out in Section 17.3b of this Memorandum;
<b>Day Count Convention</b>	means actual number of days divided by 365 days for purposes of calculating and accounting distributions and Management Fees;
<b>Default Amount</b>	has the meaning set out in Section 7.7i of this Memorandum;
<b>Defaulting Investor</b>	has the meaning set out in Section 7.7 of this Memorandum;
<b>Default Price</b>	has the meaning set out in Section 7.7v of this Memorandum;
<b>Depository</b>	means Banque de Luxembourg (BDL) in its capacity as depository and paying agent of the Fund;

<b>Depository Agreement</b>	means the depository agreement entered into between the Fund, the AIFM and the Depository, as may be amended from time to time;
<b>Depository Fee</b>	means the depository fee to which the Depository is entitled out of the Fund Total Assets, in accordance with Section 5.8.7 of this Memorandum;
<b>Designated Third Party</b>	has the meaning set out in Section 17.3f of this Memorandum;
<b>Distributions</b>	has the meaning set out in Section 14.1a of this Memorandum;
<b>Drawdown Date</b>	means any date on which Investors are called by the Fund to make a Capital Contribution to the Fund (i.e., to pay all or a portion of their Commitment);
<b>Due Date</b>	has the meaning set out in Section 7.7 of this Memorandum;
<b>Eligible Investor</b>	means a Well-Informed Investor, an Eligible U.S. Investor (if applicable) and not an EEA Retail Investor or a Prohibited Person. A well-informed investor means, in accordance with article 2 of the 2016 Law, (i) an institutional investor, (ii) a professional investor, or (iii) any other investor who declares in writing that it adheres to the status of well-informed investor and either (A) commits to invest a minimum of EUR125,000 in the Fund or (B) has obtained an assessment by a credit institution within the meaning of Regulation (EU) No 535;
<b>Eligible U.S. Investor</b>	means a U.S. Person who is (a) an "accredited investor" (as defined in Rule 501 of Regulation D under the U.S. Securities Act) and (b) either a "qualified purchaser" (within the meaning of section 2(a)(51) of the U.S. Investment Company Act) or a "knowledgeable employee" (within the meaning of Rule 3c-5 under the U.S. Investment Company Act);
<b>ERISA</b>	has the meaning set out in Section 25.38 of this Memorandum;
<b>ERISA Investor</b>	means an Investor that is: (a) an "Employee Benefit Plan" (as such term is defined in Section 3(3) of the ERISA) subject to Title I of ERISA, (b) any "Plan" defined in and subject to Section 4975 of the Code, or (c) a partnership or commingled account of a fund, or any other entity, whose assets include or are deemed to include the assets of one or more such Employee Benefit Plans or plans;
<b>ESG</b>	means environmental, social and governance;
<b>ESMA</b>	means the European Securities and Markets Authority;
<b>EU</b>	means the European Union;
<b>EU Member State</b>	means a member State of the EU;
<b>Euro, € or EUR</b>	means the single currency of the member States of the Economic and Monetary Union;
<b>Excused Investor</b>	has the meaning set out in Section 25.32 of this Memorandum;
<b>FATCA</b>	has the meaning set out in Section 17.2 of this Memorandum;

<b>FATCA Withholding</b>	has the meaning set out in Section 17.2a of this Memorandum;
<b>Fiduciary Act</b>	means Luxembourg act of 27 July 2003 relating to trust and fiduciary contracts, as may be amended from time to time;
<b>Final Closing Date</b>	means eighteen (18) months following the First Closing;
<b>First Closing</b> or <b>Initial Closing Date</b>	means the first Closing in the Fund made pursuant to the terms of this Memorandum;
<b>Fiscal Year</b>	means a twelve (12) months period ending on 31 December each year, except for the first Fiscal Year which started on the date of incorporation of the Fund and shall end on 31 December 2022;
<b>FFIs</b>	has the meaning set out in Section 17.2a of this Memorandum;
<b>Formation Costs</b>	has the meaning set out in Section 24.2 of this Memorandum;
<b>Fund</b>	means collectively BlueOrchard Financial Inclusion Fund SCA SICAV-RAIF, any Parallel Vehicle and any Intermediate Vehicle;
<b>Fund Documents</b>	means the Articles and this Memorandum;
<b>General Meeting</b>	means a general meeting of the partners of the Fund, as the context requires;
<b>General Partner</b>	means BlueOrchard Invest, S.à r.l., or any replacement general partner appointed in accordance with the Articles and this Memorandum;
<b>General Partner Fee</b>	has the meaning set out in Section 5.1d of this Memorandum;
<b>General Partner Commitment</b>	has the meaning set out in Section 7.4 of this Memorandum;
<b>Gross Method</b>	has the meaning set out in Section 25.36 of this Memorandum;
<b>IFRS</b>	means International Financial Reporting Standard, as adopted by the European Union;
<b>IGA</b>	has the meaning set out in Section 17.2b of this Memorandum;
<b>Indemnified Persons</b>	means the General Partner, the AIFM and the Investment Manager, their Affiliates (excluding Schrodgers) and any of their respective officers, directors, partners, members, shareholders, agents, delegates and employees, or any person who serves on a Parallel Vehicle, the Advisory Committee and the Investor whom such member of the Advisory Committee represents;
<b>Initial Issue Price</b>	has the meaning set out in Section 7.6 of this Memorandum;
<b>Intermediate Vehicle</b>	means any intermediate vehicle established as a conduit for investment (whether alone or with other persons);
<b>Investment</b>	means any investment whether directly or through an Intermediate Vehicle

or where the context requires, by any Parallel Vehicle;

<b>Invested Capital</b>	means the aggregate purchase price of all Investments as of the respective closing date of each such Investment;
<b>Investment Committee</b>	means the investment committee of the Investment Manager, as detailed in Section 5.5 of this Memorandum;
<b>Investment Management Agreement</b>	means the investment management agreement entered into with the Investment Manager, as may be amended from time to time;
<b>Investment Manager</b>	means BlueOrchard Finance Ltd.;
<b>Investment Period</b>	means the period from the First Closing to the fourth anniversary of the Final Closing Date and subject to up to two one-year extension by the General Partner, provided that the second one-year extension shall be subject to the consent of the Advisory Committee;
<b>Investment Restrictions</b>	means the investment restrictions applicable to the Fund, as set out in Section 4.2;
<b>Investor</b>	means any person who contemplates to subscribe for Securities of the Fund and, where the context requires, will include that person as a Shareholder;
<b>IRS</b>	has the meaning set out in Section 17.2a of this Memorandum;
<b>Key Persons</b>	has the meaning set out in Section 5.6 of this Memorandum;
<b>Key Person Event</b>	has the meaning set out in Section 5.6 of this Memorandum;
<b>Leverage</b>	means any method by which the exposure of the Fund is increased through borrowing of cash or securities, or leverage embedded in derivative position or by any other means;
<b>Liquid Assets</b>	means cash or cash equivalents and in each case denominated in convertible currencies and rated not less than AA or Aa1 by Standard & Poor's and Moody's, respectively, including, inter alia and without limitation, investments in units of money market funds, time deposits and regularly negotiated money market instruments the remaining maturity of which is less than twelve (12) months, treasury bills and bonds issued by OECD member countries or their local authorities or by supranational institutions and organisations with European Union, regional or worldwide scope as well as highly rated governmental bonds admitted to official listing on a stock exchange or dealt on a Regulated Market, issued by first-class issuers and highly liquid;
<b>Liquidation Agent</b>	means the General Partner or such other person or persons as may be appointed to be responsible for the liquidation of the Fund;
<b>Luxembourg</b>	means the Grand Duchy of Luxembourg;
<b>Luxembourg CRS Law</b>	has the meaning set out in Section 17.3b of this Memorandum;
<b>Luxembourg FATCA Law</b>	has the meaning set out in Section 17.2b of this Memorandum;

<b>Luxembourg Law Management Fee</b>	means the applicable laws and regulations of Luxembourg; means the fee to which the AIFM is entitled out of the assets of the Fund as disclosed in Section 5.3i of this Memorandum;
<b>Management Share</b>	means the Share which shall be held by the General Partner in representation of its ultimate liability for all the obligations of the Fund;
<b>Material Adverse Effect</b>	shall mean: <ul style="list-style-type: none"> <li>(a) in respect of any Shareholder, a violation (confirmed, if requested by the General Partner, in writing by legal counsel reasonably satisfactory to the General Partner) of a statute, rule, order, directive, regulation of a governmental authority or stock exchange regulatory organisation applicable to a Shareholder that will have a material adverse effect on a Shareholder, an Investment, the Fund;</li> <li>(b) in respect of a Shareholder that is a development finance institution, a requirement of such Shareholder (that the General Partner has agreed to in such Shareholder's Side Letter) to be permitted to cease making Capital Contributions;</li> </ul>
<b>Memorandum</b>	means this confidential offering memorandum, as amended or supplemented from time to time;
<b>Minimum Commitment</b>	means the minimum amount to be committed by an Investor to the Fund;
<b>Net Asset Value or NAV</b>	means the net asset value of the Fund as determined in accordance with Section 10 of this Memorandum;
<b>OECD</b>	means the Organisation for Economic Co-operation and Development;
<b>OECD Member State</b>	means a member State of the OECD;
<b>Offering Period</b>	means the period during which Commitments to the Fund are accepted, which shall start on the First Closing and end on the Final Closing Date;
<b>Offset Amount</b>	has the meaning set out in Section 5.3j of this Memorandum;
<b>Operating Expenses</b>	has the meaning set out in Section 24.1a of this Memorandum;
<b>OTC</b>	means over-the-counter;
<b>OTC Derivative</b>	means any financial derivative instrument dealt in over-the-counter;
<b>Parallel Vehicle</b>	has the meaning set out in Section 4.11 of this Memorandum;
<b>Partners</b>	means the General Partner and the Shareholders from time to time;
<b>PFIC</b>	has the meaning set out in Section 17.5t of this Memorandum;
<b>Preferred Return</b>	means eight percent (8%) per annum, compounded annually and calculated on the Capital Contribution made by a Shareholder, calculated from the date of receipt of such Capital Contribution by the Fund and accrual of the

Preferred Return until the date of Distribution or deemed Distribution to such Shareholder;

**Professional Investor**

means any person who qualifies as a professional client within the meaning of Annex III of the 1993 Act;

**Prohibited Person**

means:

- (a) any person (including, without limitation, individuals and legal entities) if, in the reasonable opinion of the General Partner, the holding of Shares by such person (i) may be detrimental to the interests of the existing Investors or to the interests of the Fund, (ii) may result in a breach of any law or regulation in the Grand Duchy of Luxembourg or any other jurisdiction, or (iii) may have the result that the Fund may become exposed to tax or other regulatory disadvantages, fines or penalties that the Fund would not have otherwise incurred; and
- (b) any Shareholder (i) who is or becomes an ERISA Investor (as defined in this Memorandum) or a Benefit Plan Investor (as defined in this Memorandum) and (ii) whose participation in the Fund render likely that the underlying assets of the Fund could be deemed to be plan assets under ERISA (as defined in this Memorandum) and thereby subject the Fund and/or the General Partner (or other persons responsible for the investment and operation of the Fund) to the fiduciary and prohibited transaction provisions under ERISA or non-U.S. federal, state, local, or other laws similar to the provisions of Section 406 of ERISA or Section 4975 of the Code;

**Qualified Investor**

an investor which:

- (a) is a Well-Informed Investor; and
- (b) is a “professional investor” within the meaning of article 1 para. 53 of the AIFM Law; and
- (c) is either an “accredited investor” under the United States Securities Act of 1933, as amended (the “**Securities Act**”) and a “qualified purchaser” under the United States Investment Company Act of 1940, as amended (the “**Investment Company Act**”) or is a qualified non-U.S. person as contemplated by Regulation S promulgated under the Securities Act and a Non-United States Person as defined in Rule 4.7 under the United States Commodity Exchange Act of 1936; and(d)is not a Prohibited Person;

**RAIF**

means a reserved alternative investment fund (*fonds d'investissement alternatif réservé*) in accordance with the 2016 Act;

**Reference Currency**

means in relation to the Fund, the currency in which the Net Asset Value of the Fund is calculated, i.e. the USD;

**Register**

means the register of Partners;

**Regulated Market**

means a regulated market which operates regularly and is recognised and open to the public;

**REIT**

has the meaning set out in Section 17.6l of this Memorandum;

<b>Related Party</b>	has the meaning set out in Section 23.2a of this Memorandum;
<b>Regulations</b>	has the meaning set out in Section 17.4a of this Memorandum;
<b>RESA</b>	means <i>Recueil électronique des sociétés et associations</i> ;
<b>Retail Investor</b>	means an Investor who is not a Professional Investor;
<b>Schroders</b>	means Schroders PLC and its Affiliates;
<b>SEC</b>	means the US Securities and Exchange Commission;
<b>Section</b>	means any section in this Memorandum;
<b>Securities</b>	means all Shares issued by the Fund from time to time;
<b>Securities Financing Transaction or SFT</b>	means: <ul style="list-style-type: none"> <li>(a) a repurchase transaction;</li> <li>(b) securities or commodities lending and securities or commodities borrowing;</li> <li>(c) a buy-sell back transaction or sell-buy back transaction;</li> <li>(d) a margin lending transaction as defined under the SFTR;</li> </ul>
<b>Service Providers</b>	means the Depositary, the Administrative Agent, the AIFM, the Investment Manager and any other person who provides services to the Fund from time to time;
<b>SFDR</b>	means Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector;
<b>SFDR Annex</b>	means the attached annex to this Memorandum which outlines the Fund's alignment with Article 9 of SFDR and provides additional information on the Fund's sustainability assessment and monitoring framework;
<b>SFTR</b>	means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse;
<b>Shareholders</b>	means any person holding Shares in the Fund, and where the context requires, an Investor whose subscription to the Fund has been accepted;
<b>Shareholders (relevant percentage) Consent</b>	means the written consent (which will include electronic mail or other electronic communication and may consist of one or more documents (including "pdf" type electronic mail attachments) in similar form) each signed by one or more of the Shareholders (excluding any of the BlueOrchard Parties) or the consent by way of a vote at a General Meeting of the Shareholders (excluding any of the BlueOrchard Parties) who hold Commitments which in aggregate exceed the relevant percentage of the Aggregate Fund Commitments of the Shareholders (excluding the Commitments of any of the BlueOrchard Parties), excluding, for the



purposes of such calculations, the Commitment to be excluded from such calculation pursuant to the terms of the General Section or any Special Section such as commitments of Defaulting Investors;

<b>Shares</b>	means any shares of the Fund and which have been or will be subscribed by the Shareholders as limited shareholders ( <i>actionnaires commanditaires</i> );
<b>SICAV</b>	means a Luxembourg <i>société d'investissement à capital variable</i> (investment company with variable capital);
<b>Side Letter</b>	has the meaning set out in Section 20b of this Memorandum;
<b>SOFR</b>	means Secured Overnight Financing Rate;
<b>Successor Fund</b>	means any other pooled investment fund designed for and offered to multiple investors managed by the General Partner or its Affiliates whose investment objective and investment strategy is substantially similar to the Fund's core investment objective and investment strategy; for the avoidance of doubt, InsuResilience Private Equity Investment Fund II (including any successor fund thereto), a blended finance fund shall be specifically be excluded from this definition;
<b>Target Fund</b>	means any undertaking for collective investment, collective investment scheme or similar pooled investment vehicle (whether regulated or unregulated) in which the Fund holds an Investment for the express purpose of liquidity management in accordance with the requirements of this Memorandum;
<b>“Taxation” or “Tax”</b>	means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including, without limitation, social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating thereto;
<b>Term</b>	has the meaning set out in Section 3 of this Memorandum;
<b>Total Assets</b>	means at any point in time the Investments held by the Fund including any Liquid Assets;
<b>Transaction Income</b>	means all fees (net of related expenses) paid directly or indirectly to the General Partner or any of its Affiliates (excluding Schrodgers) in connection with any Investment which includes transaction fees, break-up fees and monitoring fees or other similar fees;
<b>Transfer</b>	has the meaning set out in Section 9 of this Memorandum;
<b>TRS</b>	means total return swap, i.e., a derivative contract as defined in point (7) of article 2 of the SFTR in which one counterparty transfers the total economic performance, including income from interest and fees, gains and losses from

price movements, and credit losses, of a reference obligation to another counterparty;

<b>UBTI</b>	has the meaning set out in Section 17.6a of this Memorandum;
<b>Undrawn Commitment</b>	means the amount of an Investor's outstanding Commitment which remains available to be drawn down by the Fund in accordance with this Memorandum;
<b>USD or \$</b>	means the United States dollars;
<b>U.S. Tax Holding Company</b>	has the meaning set out in Section 17.5v of this Memorandum;
<b>USRPHC</b>	has the meaning set out in Section 17.6i of this Memorandum;
<b>Valuation Day</b>	means the last calendar day of each quarter as well as any other calendar day as determined by the General Partner;
<b>Valuation Policy</b>	means the valuation policy and procedures established by the AIFM and, if applicable, by the external valuer, in accordance with the AIFM Rules with a view to ensure a sound, transparent, comprehensive and appropriately documented valuation process of the Fund's portfolio, as may be amended from time to time by the AIFM and, if applicable, by the external valuer;
<b>Voting Policy</b>	means the voting policy established by the AIFM in accordance with the AIFM Rules with a view to determine when and how any voting rights attached to instruments held in the Fund's portfolio are to be exercised, to the exclusive benefit of the Fund and the Partners;
<b>Well-Informed Investors</b>	<p>means any well-informed investors within the meaning of article 2 of the 2016 Act. Within the meaning of the 2016 Act, there exist three categories of Well-Informed Investors:</p> <ul style="list-style-type: none"><li>(a) investors who are institutional investors according to Luxembourg Law;</li><li>(b) Professional Investors; and</li><li>(c) any other investor who (i) adheres in writing to the status of experienced investor and (ii) either (A) commits to invest a minimum of EUR 125,000 in the Fund or (B) has obtained an assessment by a credit institution within the meaning of Regulation (EU) 575/2013, by an investment firm within the meaning of Directive 2014/65/EU, by a management company within the meaning of Directive 2009/65/EC, or by an AIFM within the meaning of the AIFM Directive certifying its expertise, experience and knowledge in adequately appraising an investment in the Fund;</li></ul>

For the avoidance of doubt, the persons involved in the management of the Fund are regarded as Well-Informed Investors for the purpose of article 2 of the 2016 Act;

## 1 SUMMARY OF KEY TERMS

The following summary of key terms is subject to the detailed provisions of the Articles and is qualified in its entirety by reference to the Articles. If the description of the terms in the following section is inconsistent with or contrary to the description in, or terms of the Articles or related documents (including Subscription Agreements), the terms of the Articles and the related documents will prevail.

<b>The Fund</b>	BlueOrchard Financial Inclusion SCA SICAV-RAIF, a corporate partnership limited by shares ( <i>société en commandite par actions</i> ) incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies' Register ( <i>Registre de Commerce et des Sociétés</i> ) under number B 265637 and whose registered office is at 2 rue d' Alsace L-1122 Luxembourg, Grand Duchy of Luxembourg.
<b>General Partner</b>	BlueOrchard Invest, S.à r.l., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies' Register ( <i>Registre de Commerce et des Sociétés</i> ) under number B 230338 and whose registered office is at 1, Rue Goethe, L-1637 Luxembourg, Grand Duchy of Luxembourg.
<b>AIFM</b>	BlueOrchard Asset Management (Luxembourg) S.A., a private limited liability company ( <i>société à responsabilité limitée</i> ) incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Trade and Companies' Register ( <i>Registre de Commerce et des Sociétés</i> ) under number B 170191 and whose registered office is at 1, Rue Goethe, L-1637 Luxembourg, Grand Duchy of Luxembourg.
<b>Investment Manager</b>	BlueOrchard Finance Ltd.
<b>Investment Objective and Strategy</b>	The objective of the Fund is to focus on private equity investments that contribute to financial inclusion in emerging and frontier markets. The Fund will endeavour to provide commercial risk-adjusted returns to Shareholders while achieving its objective.
<b>Investment Period</b>	Period from the First Closing to the fourth anniversary of the Final Closing Date unless extended by up to two additional one-year extension by the General Partner, provided that the second one-year extension shall be subject to the consent of the Advisory Committee.
<b>First Closing and Offering Period</b>	The first closing will take place on such date as determined by the General Partner and is expected to take place in 2022. The final closing will take place on such date as determined by the General Partner provided that this date will not be later than eighteen (18) months following the First Closing.
<b>Advisory Committee</b>	The General Partner will establish an advisory committee and will appoint at its discretion representatives of the Investors that have expressed an interest in appointing a representative within the Advisory Committee.
<b>Depository</b>	Banque de Luxembourg

<b>Administrative Agent</b>	European Fund Administration S.A (EFA), Luxembourg
<b>Auditor</b>	PricewaterhouseCoopers, Luxembourg
<b>Reference Currency</b>	The Reference Currency of the Fund is the US dollar (USD).
<b>Minimum Commitment</b>	One million US dollars (USD 1,000,000), provided that the General Partner may accept lower amounts in its sole discretion.
<b>BlueOrchard Commitment</b>	<p>The General Partner (or any Affiliate), in its capacity as general partner, agrees to maintain Commitments of not less than five percent (5%) of the Aggregate Fund Commitments throughout the life of the Fund, subject to a maximum of fifteen million US Dollar (USD 15,000,000) (“<b>General Partner Commitment</b>”).</p> <p>Where other BlueOrchard Parties make additional Commitments such additional Commitment may be counted towards the General Partner Commitment.</p>
<b>Target Size</b>	The General Partner intends to raise Aggregate Fund Commitments of around three hundred million US Dollar (USD 300,000,000) (“ <b>Target Size</b> ”) provided that the General Partner shall not be entitled to raise Aggregate Fund Commitments above five hundred million US Dollar (USD 500,000,000) (“ <b>Hard Cap</b> ”).
<b>Term</b>	The Fund has been created for a limited duration and will be automatically dissolved on the tenth (10th) anniversary of the Final Closing Date, provided that the General Partner may extend the term of the Fund with the prior approval of the Advisory Committee by up to two one-year extension (the “ <b>Term</b> ”).
<b>Shares</b>	Shares are available for subscription by Eligible Investors: Well-Informed Investor, or Eligible U.S. Investor and not an EEA Retail Investor or a Prohibited Person.
<b>Management Fee</b>	<ul style="list-style-type: none"> <li>- Two percent (2.0%) per annum on Commitments until the fourth (4<sup>th</sup>) anniversary of the Final Closing Date, thereafter, the Management Fee shall be based on Invested Capital and the Management Fee rate shall be reduced by ten (10%) each year.</li> <li>- For Investors participating in the First Closing of the Fund, the Management Fee rate shall be one point five percent (1.5%) per annum, otherwise subject to the same terms as above.</li> </ul>
<b>SFDR Annex</b>	Schedule 2 of this Memorandum outlines the Fund’s alignment with Article 9 of SFDR and provides additional information on the Fund’s sustainability assessment and monitoring framework.
<b>Valuation</b>	As described in the Fund Documents, the NAV will be calculated on each Valuation Day. The Valuation Day is the last calendar day of each quarter of the Fiscal Year provided that the General Partner, in its sole discretion, may determine additional Valuation Days.

## 2 THE FUND

### 2.1 Corporate form – Legal regime

- a. The Fund is a Luxembourg investment company with variable capital – reserved alternative investment fund (*société d'investissement à capital variable – fonds d'investissement alternatif réservé*), governed by, *inter alia*, the 2016 Act, the 2013 Act, the 1915 Act and the Articles.
- b. The Fund was incorporated under the form of a corporate partnership limited by shares (*société en commandite par actions*) and is registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés, Luxembourg*) under the number B 265637, with registered office at 2 rue d'Alsace L-1122 Luxembourg, Grand Duchy of Luxembourg.
- c. The capital of the Fund shall at all times be equal to the value of its net assets. The subscribed capital of the Fund must reach an amount in USD equivalent to at least EUR 1,250,000 within a period of twelve (12) months following its establishment.
- d. In addition to the classes existing as of the establishment of the Fund, as set forth under Section 6.3, the Board may from time-to-time issue Shares in successive classes (as accumulation class or distribution class, each a "Class") and tranches, each with its own features determined at the discretion of the Board at the time the relevant Class or tranche of Shares is issued.

### 2.2 Applicable Law - Jurisdiction

- a. Subject to Section 2.2 **Error! Reference source not found.** below, any claim arising between the General Partner, the AIFM, the Investment Manager, the Fund and the Shareholders will be settled according to Luxembourg Law and subject to the jurisdiction of the Court of the District of Luxembourg-City, provided that the General Partner, the AIFM, the Investment Manager and the Fund may subject themselves to the jurisdiction of the courts of the countries in which the Securities are offered or sold, with respect to claims by Shareholders resident in such countries and, with respect to matters relating to subscriptions and redemptions by Investors resident in such countries, to the laws of such countries.
- b. Investors in the Fund will make a contractually binding subscription to the Fund by the execution and delivery of the Commitment Agreement. The rights and obligations of the Investors are set out in this Memorandum, the Articles and the relevant Commitment Agreements as well as the laws of the Grand Duchy of Luxembourg. Investors will not acquire any direct legal interest in investments made by the Fund. As Member State of the European Union, the Grand Duchy of Luxembourg applies Council Regulation (EC) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended, supplemented or replaced from time to time. Luxembourg also adheres to other treaties and conventions on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and, in the absence of an EU regulation, a treaty or a convention, Luxembourg courts can, under certain conditions grant exequatur (enforcement) to a foreign judgment in Luxembourg.

## 3 TERM OF THE FUND

The Fund has been created for a limited duration and will be automatically dissolved on the tenth (10th) anniversary of the Final Closing Date, provided that the General Partner may extend the term

of the Fund with the prior approval of the Advisory Committee by up to two one-year extension (the “Term”).

## **4 INVESTMENT OBJECTIVE, STRATEGY AND RESTRICTIONS**

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

The objective of the Fund is to focus on private equity investments that contribute to financial inclusion in emerging and frontier markets. The Fund pursues a relative value investment approach and targets a long-term portfolio allocation as follows:

#### *4.1.1 Sector allocation*

- 30-60% in access to finance
- 30-60% in (micro) insurance
- 0-30% in technology

#### *4.1.2 Regions*

- 50-70% Asia
- 30-50% Africa
- 0-20% Latin America

#### *4.1.3 Currencies*

- 70-100% local currency
- 0-30% hard currency

The above illustrates the long-term target portfolio allocation and shall not be construed as investment restrictions. The actual portfolio allocation may deviate from these targets. In connection with its investment strategy, the Fund may hold various types of instruments in portfolio companies such as, shares, partnership interests, limited liability company interests, warrants, options, bonds, notes, debentures and other equity and debt instruments or financial arrangements or interests of whatever kind, whether or not publicly traded or readily marketable.

Further, the Fund may hold Cash and Cash Equivalents for, inter alia, liquidity management purposes.

### **4.2 Investment restrictions**

The Fund will follow the diversification rule applicable to RAIFs under the 2016 Act.

The Fund shall not:

- i. invest more than 15% of the Target Size in a single investment; and
- ii. invest more than 20% of the Target Size in any single country

provided that such limits shall be applied at the time of investment. In any case, Investments shall be made with a view to diversify and spread investment risks of the Fund.

Further, the Fund may not invest in Investments which are not compliant with the International Finance Corporation’s exclusion list and are not in line with the International Finance Corporation Performance Standards. In addition, minimum eligibility criteria both in terms of ESG and impact performance will have to be met for each Investment, unless specific waivers are granted by the

Fund's Investment Committee.

#### **4.3 Investment Period**

The Investment Period shall start on the First Closing and end on the fourth anniversary of the Final Closing Date unless extended by up to two one-year extension by the General Partner, provided that the second one-year extension shall be subject to the consent of the Advisory Committee.

The first closing will take place on such date as determined by the General Partner and is expected to take place in 2022.

The final closing will take place on such date as determined by the General Partner provided that this date will not be later than eighteen (18) months following the First Closing.

#### **4.4 Reinvestment**

- a. During the Investment Period, the AIFM may decide, to (i) retain net distributable cash in the Fund and reinvest in lieu of making a further drawdown or (ii) decide to distribute net distributable cash to Shareholders, in which case they will increase each Shareholder's Undrawn Commitment by an amount equal to the amount of cash distributed and such amounts will be available for further drawdown in accordance with the terms of the Fund Documents.
- b. Following the Investment Period, the AIFM may decide to retain net distributable cash in the Fund and reinvest only if such reinvestment would protect the value of existing Investments.

#### **4.5 Hedging**

The Fund may from time to time enter into interest rate or currency hedging arrangements. However, it shall not enter into derivative transactions for investment purposes or any purposes other than hedging interest rate and currency risk.

#### **4.6 Borrowing**

The Fund may deploy a certain level of third-party debt to finance part of the Investments or for working capital purposes, to the extent that such financing is available. The aggregate liability of the Fund with respect to all borrowing, shall not exceed the lesser of (A) twenty-five percent (25%) of the aggregate Capital Commitments and (B) the aggregate amount of Undrawn Commitments. The Fund shall only enter into borrowing arrangements which are temporary in nature and are fully covered by Capital Commitments from Shareholders. The Fund will not apply structural leverage.

Subject to the foregoing, the AIFM or the General Partner may establish a credit facility for the Fund with one or more financial institutions or other lenders, pursuant to which the Fund's obligations are secured by a pledge or other grant of a security interest and the assignment by the General Partner to the relevant lender of the rights of the General Partner to deliver Call Notices to the Shareholders and to enforce all remedies against Shareholders that fail to fund their respective Undrawn Commitments. In case of Capital Calls made by such lender, the Fund will issue Shares accordingly to the extent that the called Capital Commitment is paid.

Each Investor hereby expressly acknowledges that a pledge or assignment may be granted over its Undrawn Commitment and further acknowledges and agrees, for the benefit of the respective lender(s) (which shall be entitled to directly enforce such rights), that the respective lender(s) may, in accordance with the terms of the abovementioned security, directly request payment of its

Undrawn Commitment, including through requesting payment to such lender(s) directly.

Each Investor agrees to fund (if requested by the respective lender(s)) its Undrawn Commitment to the respective lender(s) for repayment of a liquidity facility to any account indicated by the respective lender(s), without set-off, counterclaims or other defences (all of which are hereby waived by the Investor) including for the benefit of the lender(s) who may rely and enforce such waiver. Each Investor agrees that any claims that such Investor has or may have against the Fund shall be and are subordinated to all payments (whether of interest or principal) due to the respective lender(s) under such liquidity facility.

In connection with any credit facility the Investors agree to timely provide any necessary information and documentation requested by the credit provider and to cooperate with the General Partner in connection to any credit facility to the extent admissible by the applicable legal, contractual and regulatory framework and as set out in the Commitment Agreement. Further, the Investors shall, if instructed by the General Partner, pay all Capital Calls made by the credit provider in connection with the foregoing in accordance with the terms of this Memorandum including in the case of a default that is a result of the failure of any other Investor to make the required Capital Contribution.

#### **4.7 AIFM Directive Leverage disclosure**

As of the date of this Memorandum, the maximum level of leverage permitted in respect of the Fund is one hundred twenty-five percent (125%) of its Net Asset Value under the Commitment Method using a reference base of 1 (base 1: no leverage corresponds to a ratio of 100%) and maximum one hundred seventy-five percent (175%) of its Net Asset Value under the Gross Method (base 1). Under no circumstances will leverage exceed the restrictions set out herein.

#### **4.8 Use of SFT and TRS**

The Fund will not use SFT or TRS.

#### **4.9 Alternative Investment Vehicles**

The General Partner shall be entitled, at any time, to require any Investor to participate in a particular investment opportunity through a vehicle or investment structure other than the Fund in which the Investor is invested (in each case an “**Alternative Investment Vehicle**”) if the General Partner in its discretion determines that for legal, tax, regulatory or other reasons such Alternative Investment Vehicle is necessary or desirable, provided that:

- i. each Alternative Investment Vehicle shall (to the extent reasonably practicable in the circumstances, including without limitation in the light of legal, regulatory and tax considerations) be designed such that the overall commercial effect to an Investor of participating in the Alternative Investment Vehicle (including without limitation amounts that would be allocated and distributed to the relevant Investor) is in all material respects no less beneficial, and such that the aggregate liability of the relevant Investor to or in respect of such Alternative Investment Vehicle is no greater, than would have been the case had the relevant Investor participated in such investment opportunity through the Fund;
- ii. investments made in Alternative Investment Vehicles shall be treated as if they had been made through the Fund, such that the overall amounts called from and allocated and distributed to each Investor which has participated in an Alternative Investment Vehicle shall be the same (except for the effects of Tax) as if the relevant investments had been made by the Fund;
- iii. the General Partner shall provide each relevant Investor with a notice requiring such Investor to participate through an Alternative Investment Vehicle at least ten (10) Business



Days prior to the date that the Investors are issued with a Drawdown Notice in relation to such Alternative Investment Vehicle.

- iv. any Side Letter provisions granted to an Investor shall (to the extent applicable) extend to its participation in any Alternative Investment Vehicle; and
- v. in the case of a Transfer by a Shareholder of or in respect of all or any of its Shares, such Shareholder shall be obliged to effect an equivalent Transfer of or in respect of the equivalent proportion of its investment in any Alternative Investment Vehicle to the same person or persons, and no Shareholder shall effect or agree to effect any Transfer of or in respect of interest in an Alternative Investment Vehicle except alongside and pro rata to a permitted Transfer of or in respect of Shares.

#### **4.10 Intermediate Vehicles**

The Fund may hold its investments through Intermediate Vehicles, directly or indirectly.

An Investment into an Intermediate Vehicle should be ignored for the purpose of the above Investment Restrictions and the underlying investments of the Intermediate Vehicle should be treated as if they were direct Investments made by the Fund.

#### **4.11 Parallel Vehicle**

The General Partner or any BlueOrchard Party may set up an investment vehicle organized to co-invest in all or certain Investments in parallel with the Fund on substantially the same terms and designated by the General Partner in its sole discretion as a “**Parallel Vehicle**”.

The General Partner may in its sole discretion establish other investment vehicles to meet specific needs of certain Investors and/or to address specific tax, legal, regulatory or similar considerations.

#### **4.12 Co-investment Opportunities**

At its discretion, the General Partner may provide co-investment opportunities to electing Investors and/or strategic third parties.

### **5 MANAGEMENT AND ADMINISTRATION**

#### **5.1 General Partner**

- a. The General Partner's duties, acting on behalf of the Fund, include, among others, the appointment of the AIFM and the Service Providers and the supervision of their respective activity, the convening and organisation of Investors' meetings, the execution of Commitment Agreements and Side Letters with potential Investors and, jointly with the AIFM, the appointment of the Depositary. The biographies of the members of the board of managers of the General Partner are outlined below:
  - Maria Teresa Zappia, the Deputy CEO and Chief Impact and Blended Finance Officer of BlueOrchard Finance and a highly experienced leader in emerging markets finance and sustainable development with more than 25 years of experience;
  - Annemarie Arens, a Luxembourg based independent development finance consultant with more than 25 years of experience in impact and sustainable investment and the establishment of ESG metrics and rating frameworks;
  - Elisabeth Sherk, an impact investment professional with more than 30 years of experience in asset management in emerging markets, including more than 15 years with BlueOrchard Finance in senior positions in the areas of financial and ESG

assessments.

- b. The General Partner is not registered under the US Investment Advisers Act of 1940 as an investment adviser pursuant to an exemption from registration. The investment advisory operations of the General Partner may, however, be subject to the general jurisdiction of the SEC.
- c. The General Partner is not registered and does not intend to register with the CFTC and National Futures Association as a CPO or “commodity trading advisor.” The General Partner believes that it is exempt from being required to register as a CPO or commodity trading advisor with respect to the Fund pursuant to CFTC Rules 4.13(a)(3) and 4.14(a)(5). The Fund will not engage in futures transactions in the absence of CFTC registration or an appropriate exemption from registration.
- d. In remuneration for its services to the Fund, the General Partner is entitled to an annual fee of USD 10,000 payable by the Fund (the **General Partner Fee**).

## 5.2 Removal of the General Partner

- a. The General Partner shall notify the Shareholders immediately upon the occurrence of Cause. After a court of competent jurisdiction has finally confirmed that a Cause event has occurred, the Shareholders by written notice approved by a Shareholders 50% Consent may elect to either terminate the Fund early or remove the General Partner.

Upon the removal of the General Partner or termination of the Fund for Cause, the General Partner will not be entitled to receive further Carried Interest distributions, as per Section 14 of this Memorandum. In respect of its Commitment and Management Share, the removed General Partner shall be treated as a Shareholder and it shall not be obliged to invest in new Investments, should the Shareholders elect to appoint a new general partner (the “**New General Partner**”) and continue the Fund.

- b. The Shareholders may at any time remove and replace the General Partner or terminate the Fund by written notice approved by at least a Shareholders 75% Consent.

Upon such removal or termination of the Fund, the General Partner shall be entitled to receive further Carried Interest distributions, as per Section 14.1 of this Memorandum, with respect to Investments made prior to such removal (but not with respect to any Investment made thereafter). In respect of its Commitment and Management Share, the removed General Partner shall be treated as a Shareholder and it and it shall not be obliged to invest in new Investments, should the Shareholders elect to appoint a New General Partner and continue the Fund.

## 5.3 AIFM

- a. The Fund has appointed BlueOrchard Asset Management (Luxembourg) S.A. as its external alternative investment fund manager in accordance with the 2013 Act pursuant to the AIFM Agreement, a copy of which is available at the registered office of the AIFM. The AIFM has its registered office at 1, Rue Goethe L-1637 Luxembourg, Grand Duchy of Luxembourg.
- b. The AIFM is a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Luxembourg on 26 June 2012. The AIFM was approved on 8 May 2015 by the CSSF as an AIFM authorised under the 2013 Act.

- c. In its capacity as AIFM of the Fund, the AIFM is in charge of ensuring compliance with the AIFM Directive, as implemented in Luxembourg. The AIFM is entrusted under the AIFM Agreement with the portfolio management, the risk management and the distribution and sales services for the Fund. The AIFM is entitled to delegate its duties in accordance with, and subject to, the provisions of the AIFM Rules and will appoint the Investment Manager or its delegate to perform some of the functions set out in Section 5.4.
- d. The AIFM has a share capital of at least one hundred and twenty-five thousand euros (EUR 125,000). The AIFM is also required by the AIFM Rules to hold an additional amount of own funds equal to 0.02% of the value of the managed AIFs' portfolios in excess of two hundred and fifty million Euro (EUR 250,000,000), with a cap at ten million Euro (EUR 10,000,000). In addition, in order to cover potential professional liability risks resulting from the activities that the AIFM may carry out pursuant to the AIFM Directive, the AIFM will benefit from a professional liability insurance cover satisfying the requirement of article 15 of the AIFMD-CDR.
- e. The AIFM has a remuneration policy in place which seeks to ensure that the interests of the AIFM and the Partners of the Fund are aligned. Such remuneration policy imposes remuneration rules on staff and senior management within the AIFM whose activities have an impact on the risk profile of the Fund. The AIFM will seek to ensure that such remuneration policies and practices will be consistent with sound and effective risk management and with the AIFM Directive and ESMA's remuneration guidelines. The AIFM will also seek to ensure that such remuneration policies and practices will not encourage risk taking which is inconsistent with the risk profile and constitutional documents of the Fund.
- f. For the purpose of a more efficient conduct of its business, the AIFM may delegate to third parties the power to carry out some of its functions on its behalf, subject to limitations and requirements, including the existence of objective reasons, in accordance with applicable laws and regulations and in particular article 18 of the 2013 Act. The delegated functions will remain under the supervision and responsibility of the AIFM and the delegation will not prevent the AIFM from acting, or the Fund from being managed, in the best interests of the Investors.
- g. The AIFM is not registered under the US Investment Advisers Act of 1940 as an investment adviser pursuant to an exemption from registration. The investment advisory operations of the AIFM may, however, be subject to the general jurisdiction of the SEC.
- h. The AIFM is not currently registered and does not intend to register with the CFTC and National Futures Association as a CPO or "commodity trading advisor." The AIFM believes that it is exempt from being required to register as a CPO or commodity trading advisor with respect to the Fund pursuant to CFTC Rules 4.13(a)(3) and 4.14(a)(5). The Fund will not engage in futures transactions in the absence of CFTC registration or an appropriate exemption from registration.
- i. In remuneration for its services to the Fund, the AIFM will receive from the Fund an annual fee (the "**Management Fee**") calculated and accounted for in accordance with the Day Count Convention and paid in arrears on a tranching basis until the expiration of the Fund's term as follows:
- Two percent (2.0%) per annum on Commitments until the fourth (4<sup>th</sup>) anniversary of the Final Closing Date,
  - thereafter, the Management Fee shall be based on Invested Capital and the Management Fee rate shall be reduced by ten (10%) each year.
  - For Investors participating in the First Closing of the Fund, the Management Fee

rate shall be one point five percent (1.5%) per annum, otherwise subject to the same terms as above.

- j. One hundred percent (100%) of all Transaction Income (or such lower amount as may be agreed with the Advisory Committee in any case) shall be used to offset the Management Fee (the “**Offset Amount**”). The General Partner will report on any Transaction Income at the next Advisory Committee meeting. At the time of dissolution of the Fund, any Offset Amount that has not been applied to offset the Management Fee will be distributed to the Shareholders in proportion to their Commitments, unless a Shareholder elects not to receive such amount.
- k. The AIFM may waive or reduce the Management Fee, the Carried Interest, or any other fee, cost or expense charged by the Fund in respect of a Shareholder or otherwise.

#### **5.4 Investment Manager**

- a. The AIFM has appointed, with the acknowledgement of the General Partner, BlueOrchard Finance Ltd. (the “**Investment Manager**”) as investment manager of the Fund pursuant to an investment management agreement, as may be amended from time to time (the “**Investment Management Agreement**”).
- b. The Investment Manager has its registered office in Seefeldstrasse 233, CH-8008 Zurich, Switzerland and is regulated and authorised as an asset manager by the Swiss Financial Market Supervisory Authority (FINMA).
- c. As investment manager of the Fund, the Investment Manager will provide investment management services with respect to the sustainable investment and responsible divestment of the assets of the Fund pursuant to the terms of the Investment Management Agreement. The Investment Manager will undertake to ensure that all proposed investments will be in accordance with the Fund’s investment objectives and policy as set out in this Memorandum.
- d. The Investment Manager is remunerated out of the Management Fee by the AIFM.
- e. The Investment Manager is not registered under the US Investment Advisers Act of 1940 as an investment adviser pursuant to an exemption from registration. The investment advisory operations of the Investment Manager may, however, be subject to the general jurisdiction of the SEC.
- f. The Investment Manager is not currently registered and does not intend to register with the CFTC and National Futures Association as a CPO or “commodity trading advisor.” The Investment Manager believes that it is exempt from being required to register as a CPO or commodity trading advisor with respect to the Fund pursuant to CFTC Rules 4.13(a)(3) and 4.14(a)(5). The Fund will not engage in futures transactions in the absence of CFTC registration or an appropriate exemption from registration.

#### **5.5 Investment Committee**

The Investment Manager will establish an Investment Committee for the Fund. The Investment Committee will, under the supervision of the Investment Manager: (i) review and comment and make recommendations on proposed investments and divestments submitted by the Investment Manager, (ii) perform such other duties set out in the Fund Documents.

## 5.6 Key Persons

- a. During the term of the Fund, Felix Hermes, Ernesto Costa, Mahesh Joshi, Thibaud Ponchon, Richard Hardy, Philipp Müller, Maria Teresa Zappia, Daniel Perroud and Matthew Sparks, shall each be deemed to be a Key Person (and together “**Key Persons**”). If during the Investment Period more than three (3) of the Key Person cease to be employed or engaged by the General Partner of its Affiliates (a “**Key Person Event**”), the Investment Period will automatically be suspended and no Drawdown Notices may be issued without the Advisory Committee’s consent other than to pay the Fund’s expenses, complete Investments the Fund is legally bound to complete, and repay indebtedness and satisfy liabilities of the Fund incurred prior to such suspension.
- b. The suspension will last until either (i) Shareholders with seventy five percent (75%) of the share capital or (ii) the Advisory Committee approves the remediation plan for the Key Person Event or waives the suspension either generally or with respect to one or more specified investments. If no such approval or waiver is given within 180 days of the beginning of the suspension, the Investment Period will terminate permanently.

## 5.7 Advisory Committee

- a. The General Partner will establish an advisory committee for the Fund (the “**Advisory Committee**”), no later than by the Final Closing Date comprising up to seven members, who shall be representatives of Shareholders and appointed by the General Partner. The Advisory Committee will be invited by the General Partner to meet at least once a year. Matters that would be referred to the Advisory Committee shall be resolved by the General Partner in good faith prior to the establishment of the Advisory Committee.
- b. The Advisory Committee shall be consulted by the General Partner for, amongst other things:
  - i. any potential conflicts of interest between the Fund and any Related Parties;
  - ii. the replacement of a Key Person;
  - iii. consent to all Material Related Party Transactions;
  - iv. such other matters as set forth in this Memorandum; and
  - v. such other matters as the General Partner or AIFM may from time to time consider appropriate in their sole discretion.
- c. The BlueOrchard Parties shall be entitled to attend all meetings of the Advisory Committee but not to vote on any matter submitted to the approval of the Advisory Committee. The Advisory Committee members may resolve to hold meetings without any of the BlueOrchard Parties being present or represented.
- d. The General Partner shall convene a meeting of the Advisory Committee as soon as reasonably practicable following a written request to do so from at least three (3) members of the Advisory Committee. Meetings of the Advisory Committee may take place in person, via telephone or video conferencing systems during which all participants are able to hear and participate in the proceedings. The General Partner shall give members of the Advisory Committee at least 10 days’ notice of meetings of the Advisory Committee shall be taken by the vote of a majority of its members present or represented, and, for the avoidance of doubt, tied votes with respect to a decision shall not result in the approval of such decision. Each member of the Advisory Committee shall have one (1) vote regardless of the size of the Commitment of the Shareholder such member represents.
- e. A member shall declare any potential conflict of interest, of which it is aware, involving him

or herself personally and/or the Shareholder it represents but shall keep its right to vote on any matters where any such potential conflict of interest has been identified.

- f. No fees shall be paid to the members of the Advisory Committee. The Advisory Committee shall be entitled to appoint professional advisors at the expense of the Fund.
- g. The Fund shall reimburse the members of the Advisory Committee for one representative's reasonable travel and lodging expenses incurred in attending meetings of the Advisory Committee which expenses shall constitute Operating Expenses. The Advisory Committee shall have the right to seek external advice (including, without limitation, legal advice) and expense the fees relating to such advice to the Fund.
- h. The Advisory Committee shall have no power to manage, direct or control the Fund or any holding companies, and its recommendations shall be non-binding, except in relation to recommendations relating to Section 5.7b(ii) and as otherwise provided in this Memorandum. However, the General Partner agrees to have regard, and give due consideration, to the decisions of the Advisory Committee. For the avoidance of doubt the functions of the Advisory Committee and its members shall not be construed as being external acts of management of the Fund.
- i. The General Partner shall circulate to the Advisory Committee members (i) the agenda of any Advisory Committee meeting reasonably in advance of such meeting and (ii) the minutes of any Advisory Committee meeting reasonably after such meeting.

## **5.8 Depositary and paying agent**

### *5.8.1 Introduction and key duties*

- a. The Fund has, under the terms of the Depositary Agreement, engaged Banque de Luxembourg (BdL) as depositary of the Fund's assets. The Depositary shall also be responsible for the oversight of the Fund to the extent required by and in accordance with the AIFM Rules, applicable law, rules and regulations.
- b. The key duties of the Depositary are to perform the depositary duties referred to in the 2016 Act and chapter 3, section 4 of the 2013 Act, essentially consisting of:
  - i. monitoring and verifying the Fund's cash flows;
  - ii. safekeeping of the Fund assets, including inter alia holding in custody financial instruments that may be held in custody and verification of ownership of other assets;
  - iii. ensuring that the sale, issue, re-purchase, redemption and cancellation of Securities are carried out in accordance with the Articles, this Memorandum and applicable law, rules and regulations;
  - iv. ensuring that the value of the Securities is calculated in accordance with the Articles, this Memorandum and applicable law, rules and regulations;
  - v. ensuring that in transactions involving Fund assets any consideration is remitted to the Fund within the usual time limits;
  - vi. ensuring that the Fund's income is applied in accordance with the Articles, this Memorandum, applicable law, rules and regulations; and
  - vii. carrying out instructions from the AIFM unless they conflict with the Articles or applicable law, rules and regulations.
- c. The Depositary is registered with the Luxembourg Trade and Companies' Register (*Registre de Commerce et des Sociétés*) under number B 5310. Its Luxembourg branch is authorised

to provide such services in accordance with the 1993 Act and specialises in fund custody and administration services.

- d. The Depositary is, in respect of its services as depositary in Luxembourg, regulated by the CSSF.
- e. As paying agent, the Depositary is responsible for the collection of subscription monies of Investors, payment of redemption proceeds and payment of dividends (if any) to the Investors.

#### 5.8.2 *Delegation*

- a. Under the terms of the Depositary Agreement and in accordance with the 2013 Act and the AIFM Rules, the Depositary has power to delegate certain of its depositary functions. A list of delegates with whom the Depositary has entered into written agreements delegating the performance of its safekeeping function in respect of certain of the Fund's assets as well as any subdelegates appointed is available at the registered office of the Depositary.
- b. The liability of the Depositary will not be affected by the fact that it has entrusted to a third party certain of the Fund's assets in its safekeeping. The AIFM will notify the Shareholders without delay where any liability has been discharged to a delegate in accordance with, and as permitted under, the AIFM Rules. In order to discharge its responsibility in this regard, the Depositary must among others and in accordance with the AIFM Rules exercise due skill, care and diligence in the selection, continued appointment and ongoing monitoring of a third party as a safekeeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned; maintain an appropriate level of supervision over the safekeeping agent; and make appropriate inquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.
- c. Without prejudice to the section "Conflicts of Interest" below, from time to time actual or potential conflicts may arise between the Depositary and its delegates or sub-delegates, for example where an appointed delegate or sub-delegate is an affiliated group company which receives remuneration for another custodial service it provides to the Fund.
- d. Included in the Depositary's conflict of interest policy are procedures to identify, manage and monitor on an on-going basis any actual or potential conflict of interest involving its delegates or sub-delegates.

#### 5.8.3 *Conflicts of Interest*

- a. Actual or potential conflicts of interest may also arise between the Fund, the Investors or the AIFM on the one hand and the Depositary on the other hand.
- b. For example, such actual or potential conflict may arise because the Depositary is part of a legal entity or is related to a legal entity which provides other products or services to the Fund or the AIFM. In particular, depositary and administration services are provided by the same legal entity, Banque de Luxembourg (BDL). In practice, however, the depositary and administration lines of business are functionally and hierarchically separated and operate on an arm's length basis. In addition, the Depositary may have a financial or business interest in the provision of such products or services, or receive remuneration for related products or services provided to the Fund, or may have other clients whose interests may conflict with those of the Fund, the Shareholders or the AIFM.
- c. The Depositary and any of its affiliates may effect, and make a profit from, transactions in

which the Depositary (or its affiliates, or another client of the Depositary or its affiliates) has (directly or indirectly) a material interest or a relationship of any description and which involves or may involve a potential conflict with the Depositary's duty to the Fund. This includes circumstances in which the Depositary or any of its affiliates or connected persons: acts as market maker in the investments of the Fund; provides broking services to the Fund and/or to other funds or companies; acts as financial adviser, banker, derivatives counterparty or otherwise provides services to the issuer of the investments of the Fund; acts in the same transaction as agent for more than one client; has a material interest in the issue of the investments of the Fund; or earns profits from or has a financial or business interest in any of these activities.

- d. The group-wide conflict of interest policy provides that the Banque de Luxembourg (BDL) manages conflicts through various policies, procedures and/or processes, which may, depending upon the conflict, include prevention or avoidance of conflicts, or appropriate disclosures, establishing information barriers, restructuring transactions, products or processes, and/or changing compensation incentives.
- e. The Depositary has a conflict-of-interest policy in place to identify, manage and monitor on an on-going basis any actual or potential conflict of interest. The Depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks. The system of internal controls, the different reporting lines, the allocation of tasks and the management reporting allow potential conflicts of interest and the Depositary issues to be properly identified, managed and monitored.

#### 5.8.4 *Termination of the Depositary Agreement*

The Depositary Agreement provides that it will continue in force unless and until terminated by either party giving not less than 90 days' prior written notice to the other, although termination may be immediate in certain circumstances, such as the Depositary ceasing to be authorised to act as depositary. Upon an (envisaged) removal or resignation of the Depositary, the Fund, or the AIFM acting on behalf of the Fund, shall with due observance of the applicable requirements of the CSSF and in accordance with applicable law, rules and regulations, appoint a successor depositary.

#### 5.8.5 *Liability of the Depositary*

- a. The Depositary is liable to the Fund for the loss by the Depositary or a third party to whom the custody of financial instruments that can be held in custody has been delegated, except where the Depositary's liability has been validity transferred to the third party to whom the custody of financial instruments has been delegated in accordance with the AIFM Rules. In the case of such a loss of a financial instrument held in custody, the Depositary shall return a financial instrument of identical type or the corresponding amount to the Fund or the AIFM acting on behalf of the Fund without undue delay. The Depositary is not liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.
- b. The Depositary is also liable to the Fund for direct damages resulting from breach of the Depositary Agreement by reason of negligence, intentional failure or fraud of the Depositary in performing services as set out in the Depositary Agreement. Investors have not any direct rights against or liabilities from the Depositary under the Depositary Agreement. The Depositary Agreement contains indemnities in favour of the Depositary excluding matters arising by reason of its failure to satisfy its obligation of due skill, care and diligence as provided in the Depositary Agreement or the failure of any agent of the Depositary to satisfy



the same standard of care or any loss for which the Depositary is liable under the AIFM Directive as implemented into Luxembourg law by the 2013 Act, the AIFMD-CDR and any applicable rules, requirements, guidance or practices stated by the CSSF to be applicable to the Fund, the AIFM or the Depositary, as appropriate, from time to time, or any of them, as the case may be.

#### 5.8.6 *Other provisions of the Depositary Agreement*

The Depositary Agreement is governed by the laws of Luxembourg and the courts of Luxembourg City shall have exclusive jurisdiction to hear any disputes or claims arising out of or in connection with the Depositary Agreement.

#### 5.8.7 *Depositary Fee*

In consideration of the services rendered as depositary of the Fund, the Depositary is entitled to receive a fee (the “**Depositary Fee**”), as further described in the Depositary Agreement.

### 5.9 **Administrative Agent, Registrar and Transfer Agent**

- a. The Fund has appointed European Fund Administration S.A. (EFA), Luxembourg as the administrative agent and registrar and transfer agent of the Fund (the “**Administrative Agent**”).
- b. The Administrative Agent is responsible for the performance of the central administrative functions required by Luxembourg Law and among others for handling the calculation of the NAV of the Shares, the processing of subscriptions and conversions of Securities, dealing with requests for redemptions and transfer of Securities, the safe keeping of the Register and the bookkeeping and maintenance of the Fund's accounting records as well as for the mailing of statements, reports, notice and other documents to the concerned Partners of the Fund. In addition, the Administrative Agent will verify that direct Investors in the Fund are Eligible Investors.
- c. The rights and duties of European Fund Administration SA (EFA) as Administrative Agent are governed by an agreement entered into for an unlimited duration (the “**Central Administration Agreement**”) and can be terminated by either party by giving ninety (90) days written notice.
- d. In consideration of the services rendered as Administrative Agent of the Fund, the Administrative Agent is entitled to receive a fee (the “**Administrative Agent Fee**”), as further described in the Central Administration Agreement. The Administrative Agent may be entitled under the Central Administration Agreement to obtain reimbursement from the Fund of certain reasonable and duly documented expenses.

### 5.10 **Domiciliary Agent**

- a. The Fund has appointed European Fund Administration S.A. (EFA), Luxembourg as domiciliary agent of the Fund pursuant to a domiciliation agreement for an unlimited duration and can be terminated by either party by giving ninety (90) days written notice.
- b. The fees and costs of for the above functions are paid by the Fund and are conform to common practice in Luxembourg.

### 5.11 **Auditor**

PricewaterhouseCoopers, Luxembourg has been appointed as the Fund's auditor and will fulfil all

duties prescribed by the 2016 Act.

## **6 CAPITAL AND SHARES**

### **6.1 Investment by Eligible Investors**

Securities are exclusively reserved for Eligible Investors. The Fund will not issue or give effect to any Transfer of Securities to any Investor who is not an Eligible Investor.

The Fund (and the Administrative Agent acting on behalf of the Fund) reserves the right to request such information as is necessary to verify the identity of an Investor and its status regarding the qualification as an Eligible Investor. In the event of delay or failure by the Investor to produce any information required for verification purposes, the Fund (and the Administrative Agent acting on behalf of the Fund) may refuse to accept the subscription application or transfer notice).

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

- a. The General Partner made a capital contribution of one US Dollar (USD 1) in the Fund in representation of its Management Share in the Fund. The General Partner may transfer its Management Share in the Fund to a replacement general partner: (i) which is an Affiliate of the General Partner who assumes the rights and undertakes the obligations of the General Partner to the Fund; or (ii) with Shareholders 75% Consent.
- b. The share capital of the Fund shall be represented by shares without par value and shall at any time be equal to the total net asset value of the Fund. The share capital of the Fund shall thus vary ipso jure, without any amendment to the Articles or the Memorandum.
- c. In accordance with article 25 of the 2016 Act, the subscribed share capital of the Fund may not be less than one million two hundred fifty thousand euro (EUR 1,250,000) or equivalent in other currency. This minimum must be reached within twelve (12) months following the incorporation of the Fund. The subscribed share capital of the Fund not denominated in Euro shall be converted into Euro for the purposes of determining that the minimum capital of the Fund is reached.
- d. The Register include, in accordance with the 1915 Act: (i) a copy of the Articles (as amended or restated from time to time); (ii) the name and address of each Shareholders; and (iii) details on each such Shares. Each Shareholders, personally or through an authorized representative, may, for purposes reasonably related to its Share(s) only, examine the Register during reasonable business hours and upon ten (10) Business Days' prior written notice to the General Partner. Each Shareholder shall notify the General Partner in writing of its address and promptly of any change thereto, and the General Partner shall be entitled to rely on the latest address so communicated for all purposes. Any permitted Transfer of Shares made in accordance with the Articles and the Memorandum will be registered in the Register.
- e. Shares may be compulsory redeemed at the initiative of the General Partner in accordance with, and in the circumstances set out under article 9 of the Articles and the provisions of this Memorandum.
- f. Each Shares shall have the same voting rights and will have no pre-emptive subscription rights. This vote can be exercised in person or by proxy.
- g. The General Partner may, in its sole discretion, suspend the voting rights of any Shareholder in the case that such Shareholder is a Defaulting Investor.

- h. Fractional Shares will be issued to the nearest 1,000th of a Share, and such fractional Shares will not be entitled to vote but will be entitled to a participation in the net results and in the proceeds of liquidation attributable to the relevant Class on a pro rata basis.
- i. The Fund's capital is at all times equal to its Net Asset Value. The Fund's capital is automatically adjusted when additional Shares are issued or outstanding Shares are redeemed.

### 6.3 Classes of Shares

As of the establishment of the Fund, the following Classes of Shares are available for subscription by the relevant Investors, with specific features, as set forth under Schedule 3 to this Memorandum:

- Class A Shares;
- Class CI Shares;
- Class E Shares.

The Fund may issue additional Classes of Shares subject to the conditions set forth in this Memorandum.

## 7 OFFERING OF SECURITIES – CAPITAL CONTRIBUTION

### 7.1 General

The Fund will collect subscription offers from Investors which the Fund may accept during the Offering Period except as may be prescribed in this Memorandum and/or in any Side Letter (each such acceptance is referred to as a “**Closing**”; each accepted subscription offer constitutes a “**Commitment Agreement**”). The Fund may accept at its discretion a subscription offer in full or in part or may refuse to accept it all. The Fund may only accept subscription offers from Eligible Investors.

The First Closing is expected to take place in 2022. Subsequent Closings may be held at the discretion of the General Partner but not later than eighteen (18) months after the First Closing, provided however that the General Partner may extend such period for an additional six (6) months subject to the prior approval of the Advisory Committee.

Investors who are admitted to the Fund or who increase their Commitments at any additional Closing other than the First Closing will be required to (i) contribute their pro rata share of all amounts previously contributed to the Fund by existing Investors (as adjusted to take account of the admission of the new Investors to the Fund and any increased Commitments by existing Investors) less such amount as is necessary to take into account any Distribution previously made (and not redrawn), (ii) pay an interest payment calculated at the rate of SOFR plus 275bps per annum on their share of such amounts, and (iii) such additional amount (the “**Compensation Amount**”) as calculated by the General Partner to reflect any increase in the value of Investments made prior to the relevant Closing. Such interest payments (as per lit. (ii)) will be distributed to existing Investors on a pro rata basis to the extent that they relate to amounts drawn down to make investments or to pay Fund expenses (other than the Management Fee), taking into account the date they became an Investor and the timing and amounts they have paid into the Fund. To the extent that such interest (as per lit. (ii)) relates to drawdowns to pay the Management Fee, such interest will be paid to the AIFM. The Compensation Amount (if any) shall be for the benefit of the previously admitted Partners. Amounts contributed to the Fund by an Investor in respect of the foregoing interest payments or Compensation Amount (if any) will not be treated as a Capital

Contribution by such Investor to the Fund (and the Investor's Undrawn Commitment will not be reduced by such amounts) and the Fund will not be required to return such amounts to such Investor.

Investors having entered into a Commitment Agreement will subscribe for Shares, up to their committed amount, upon having received Drawdown Notices sent by the General Partner at least 10 Business Days in advance, unless agreed otherwise between the parties.

## **7.2 Fund Size**

The General Partner intends to raise Aggregate Fund Commitments of around three hundred million US Dollar (USD 300,000,000) ("**Target Size**") provided that the General Partner shall not be entitled to raise Aggregate Fund Commitments above five hundred million US Dollar (USD 500,000,000) ("**Hard Cap**").

## **7.3 Minimum Commitment**

The minimum Commitment amount shall be one million US dollars (USD 1,000,000), provided that the General Partner may accept lower amounts in its sole discretion.

## **7.4 BlueOrchard Commitment**

The General Partner (or any Affiliate), in its capacity as general partner, agrees to maintain Commitments of not less than five percent (5%) of the Aggregate Fund Commitments throughout the life of the Fund, subject to a maximum of fifteen million US Dollar (USD 15,000,000) ("**General Partner Commitment**"). Where other BlueOrchard Parties make additional Commitments such additional Commitment may be counted towards the General Partner Commitment.

## **7.5 Drawdown of Commitments**

Commitments in the Fund may be drawn from Investors throughout the life of the Fund on an as-needed basis to finance Investments and pay liabilities and expenses (including but not limited to the Management Fee of the Fund) up to the amount of the Commitment of the relevant Investor. All sums drawn down from Investors shall increase the relevant Investor's Capital Contributions and reduce its Undrawn Commitment.

Investors shall receive a Drawdown Notice at least ten (10) Business Days prior to each drawdown, unless agreed otherwise between the parties.

Upon receipt of the drawdown amount, the Fund will issue Shares.

Each Shareholder, in its capacity as such, shall have no liability in excess of (a) the amount of its Commitment, (b) its share of any undistributed profits and assets (c) its obligation to make other payments expressly provided for in the Articles and this Memorandum, and (d) the amount of any distributions wrongfully distributed to it as required by the 1915 Act.

## **7.6 Price of Shares**

Shares will be issued at a price as set forth under Schedule 3 to this Memorandum (the "**Initial Issue Price**") at the First Closing and each subsequent Closing. In addition to the issue price, Investors who are admitted to the Fund or who increase their Commitments at any additional Closing other than the First Closing, may be required to pay additional amounts in accordance with Section 7.1.

After the Final Closing Date, Shares will be issued at Net Asset Value per Share.

## 7.7 Default

If any Investor fails to make all or any portion of any Capital Contribution pursuant to a Drawdown Notice or any other amount required to be funded by such Investor pursuant to the provisions of this Memorandum and on or before the due date for payment (the “**Due Date**”), the General Partner shall notify such Investor in writing of such failure (a “**Default Notice**”). If such failure is not cured within 10 Business Days of the Default Notice, then such Investor shall be designated by the General Partner as a “**Defaulting Investor**” and the General Partner may impose all or any of the following actions:

- i. charge an interest on the amount outstanding at the rate of three month SOFR (or, if such page or such service ceases to be available, such other page or such other service for the purpose of displaying the relevant rate as the General Partner shall reasonably select) plus 5% per annum (“**Default Amount**”) for the period from the Due Date until the date on which such outstanding amount and interest thereon shall have been paid in full and shall be allocated to the Fund; for the avoidance of doubt, the payment of the outstanding amount shall be treated as a Capital Contribution, whereas the payment of the interest thereon shall not be treated as Capital Contribution by the Defaulting Investor;
- ii. reduce or terminate the Investor’s Undrawn Commitment;
- iii. transfer the Undrawn Commitment (or any part thereof) to an existing other Investor or to a third party;
- iv. accelerate the Defaulting Investor’s Undrawn Commitment and, in the absence of payment, charge interest (at the Default Amount rate) on the aggregate accelerated amount then outstanding;
- v. compulsorily redeem all Shares held by the Defaulting Investor at a price based on the latest calculated Net Asset Value, less a penalty fee equal to, in the absolute discretion of the General Partner, the greater of either (A) 25% of the Net Asset Value of the relevant Shares or (B) the costs incurred by the Fund as a result of the holding of Shares by the Defaulting Investor (including all costs linked to the compulsory redemption) (the “**Default Price**”); and/or
- vi. exercise any other remedy available under Luxembourg Law.

For so long as a Shareholder remains a Defaulting Investor, it shall not be entitled to vote on any matter requiring the consent of the Shareholders, and the Shares of such Defaulting Investor shall not be taken into account for the purposes of any such vote.

Where an Investor is a Defaulting Investor, further calls may be made upon the other non-defaulting Investors (up to but not exceeding their respective Undrawn Commitments and, subject to Section 7.5, *pro rata* to their respective Commitments) in order to make good the shortfall.

## 8 REDEMPTIONS

Unless otherwise provided for in this Memorandum (including Schedule 3), Investors are not entitled to request redemption of their Securities.

Securities may be redeemed at the initiative of the General Partner in accordance with, and in the

circumstances set out below.

The General Partner may redeem the Shares held by a Shareholder and no consent from a Shareholder shall be required therefor under the following circumstances:

- i. if any Shareholder is or becomes a Prohibited Person (save for the case contemplated in paragraph (ii) below);
- ii. misrepresentation by the Shareholder as to its eligibility to participate in the Fund;
- iii. if the Shareholder, in the opinion of the General Partner, fails to comply with the policies of any of the Fund, the AIFM, the Administrative Agent or the Depositary adopted to comply with any law or regulation, in particular those aimed at the prevention of money laundering and/or the financing of terrorism;
- iv. if the Shareholder has committed a material breach of the Fund Documents and has failed to remedy such breach within 30 days upon being served a notice by the General Partner to remedy such breach;
- v. if the Shareholder 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, any other relief under any bankruptcy, insolvency or similar law;
- vi. if the continued participation of the Shareholder is likely to cause the Fund or any of its Affiliates (excluding Schrodgers), the General Partner or any BlueOrchard Parties entity to violate any material law, regulation or interpretation or would result in the Fund, any other Shareholder or any of their Affiliates (excluding Schrodgers), the General Partner or any BlueOrchard Parties entity suffering material taxation, economic or other disadvantages which they would not have suffered had such person not been or ceased to be a Shareholder.

In case of a compulsory redemption on the grounds referred to sub-clause (i) up to and including sub-clause (v) above, the Shares shall be redeemed at the Default Price, and in all other cases of a compulsory redemption, the redemption price shall be established as if the redemption has been requested by the Shareholder, and the redemption price shall, in any case, be paid in the manner as provided for in the Memorandum.

Shares which are to be compulsorily redeemed by the Fund may be redeemed upon the General Partner giving to the registered holder of such Shares a notice in writing of the intention to redeem such Shares specifying the date of such redemption, which must be a day on which banks in Luxembourg are open for business.

In order to give effect to the provisions on redemption of Shares described above, any certificates evidencing the Shares will be endorsed with a legend describing the substance of those provisions and restrictions.

In case a Capital Contribution previously made by an Investor is returned by the General Partner in circumstances described in the Memorandum, the corresponding Shares that have been issued against such Capital Contribution will be cancelled on the terms set forth in the Memorandum.

## **9 TRANSFER OF SECURITIES AND MANAGEMENT SHARE**

The sale, assignment, transfer, exchange, pledge, encumbrance or other disposition (“**Transfer**”) of all or any part of any Investor's Securities or Undrawn Commitments in the Fund is subject to the following.

No transfer of all or any part of any Shares or Undrawn Commitments, whether direct or indirect, voluntary or involuntary will be valid or effective if:

- i. the transfer would result in a violation of any law or regulation of Luxembourg or any other jurisdiction (including, without limitation, the U.S. Securities Act of 1993 as amended, any securities laws of the individual states of the United States, or ERISA) or subject the Fund to any other adverse tax, legal or regulatory consequences as reasonable determined by the Fund;
- ii. the transfer would result in a violation of any term of condition of the Articles or of the Memorandum; and
- iii. the transfer would result in the Fund being required to register as an investment company under the Investment Company Act, as amended.

It will be a condition of any transfer (whether permitted or required) that:

- i. such transfer be approved by the General Partner (who shall not unreasonably withhold and delay its consent to the Transfer);
- ii. the transferee represents in a form acceptable to the Fund that such transferee is a Qualified Investor, and that the proposed transfer itself does not violate any laws or regulations (including, without limitation, any securities laws) applicable to it;
- iii. the transferee is a Qualified Investor; and
- iv. (unless otherwise agreed with the Fund) the transferee undertakes to fully and completely assume all outstanding obligations of the transferor towards the Fund under the transferor's subscription agreement, commitment or any other agreement setting out the terms of the participation of the transferor in the Fund (including, for the avoidance of doubt, the provisions of the Articles and the Memorandum).

The General Partner may only assign or transfer its Management Share to a replacement general partner: (i) which is an Affiliate of the General Partner who assumes the rights and undertakes the obligations of the General Partner to the Fund; or (ii) with Shareholders 75% Consent.

## **10 CALCULATION OF THE NET ASSET VALUE**

The Net Asset Value per Share shall be calculated by the Administrative Agent, the AIFM or any agent appointed thereto by the General Partner, pursuant to article 13 and article 14 of the Articles.

- a. On each Valuation Day determined by the General Partner in accordance with applicable laws and regulations, the net asset value per Share shall be calculated by the Administrative Agent, the AIFM or any agent appointed thereto by the General Partner.
- b. The net asset value per Share will be made available to the Investors at the registered office of the Fund and at the office of the Administrative Agent in principle within not later than sixty (60) calendar days as from the relevant Valuation Day for the first three calendar quarters and one hundred and twenty (120) calendar days from the Valuation Day at the end of the calendar year.
- c. The net asset value will be calculated and rounded to two decimal numbers.
- d. The net asset value per Share on any Valuation Day is determined by dividing (i) the value of the total assets of the Fund less the liabilities of the Fund on such Valuation Day, by (ii) the number of Shares, in accordance with the valuation rules set forth below and the IFRS.
- e. The total net assets of the Fund will be equal to the difference between the gross assets and the liabilities of the Fund based on consolidated accounts prepared in accordance with the

IFRS.

- f. The accounts of Intermediate Vehicle, if any, will be consolidated to the extent required under applicable accounting rules and regulations (IFRS) with the accounts of the Fund and accordingly the underlying assets and liabilities will be valued in accordance with the valuation rules described below.
- g. The value of the assets will be determined as follows:
  - (i) The value of any cash on hand or on deposit, bills and demand notes and accounts receivable, prepaid expenses, cash dividends and interest declared or accrued as aforesaid and not yet received will be deemed to be the full amount thereof, unless in any case the same is unlikely to be paid or received in full, in which case the value thereof will be arrived at after making such discount as the AIFM may consider appropriate in such case to reflect the true value thereof.
  - (ii) The value of assets which are listed or dealt in on any stock exchange is based on the last available price on the stock exchange, provided that stock exchange is reasonably deemed to be a representative market for such instrument in terms of trading liquidity or otherwise.
  - (iii) The value of assets dealt in on any other regulated market is based on the last available price, provided that such regulated market is reasonably deemed to be a representative market for such instrument in terms of trading liquidity or otherwise.
  - (iv) Investments in private equity securities will be valued at their fair value in accordance with the valuation guidelines endorsed from time to time by Invest Europe, being currently the IPEV Valuation Guidelines.
  - (v) All other securities and assets will be valued at fair market value as determined in good faith in accordance with the procedures established by the AIFM.
- h. The AIFM may permit some other method of valuation to be used if they consider that such valuation better reflects the fair value of any asset or liability of the Fund in which case the AIFM will inform the Administrative Agent and the Auditor of such new valuation method. This method will then be applied in a consistent way. The Administrative Agent can rely on such deviations as approved by the Fund for the purpose of the net asset value calculation.
- i. For the purpose of determining the value of the Fund's assets, the Administrative Agent, having due regards to the standards of care and due diligence in this respect, may, when calculating the net asset value, completely and exclusively rely, unless there is manifest error or negligence on its part, upon the valuations provided by valuation sources identified in, or selected in accordance with, the Valuation Policy.
- j. In particular, for the valuation of any assets for which market quotations or fair market values are not publicly available (including but not limited to unlisted structured or credit-related instruments and other illiquid assets), the Administrative Agent may rely on valuations provided either by the AIFM or by third party pricing sources appointed by the AIFM under its responsibility or other official pricing sources such as for instance, UCIs' administrators, Telekurs, Bloomberg, Reuters and will not check the correctness and accuracy of the valuations so provided. If the AIFM gives instructions to the Administrative Agent to use a specific pricing source, the AIFM undertakes to conduct its own prior due diligence on such pricing source as far as its competence, reputation, and professionalism are concerned so as to ensure, to the reasonable extent possible, that the prices which will be given to the Administrative Agent are reliable; and the Administrative Agent will not,



and will not be required to, carry out any additional due diligence or testing on any such pricing source. So far as these assets are concerned, the sole responsibility of the Administrative Agent is to compute the net asset value on the basis of the prices provided by the AIFM or the appointed third-party pricing source(s), without any responsibility whatsoever (in the absence of manifest error or negligence on its part) as to the correctness or accuracy of the valuations provided by the relevant sources. For the avoidance of doubt, the Administrative Agent will not undertake any testing on valuations or prices nor collect or analyse any supporting documents which would support or evidence the accuracy of the prices of any asset held in the portfolio for which a price or valuation is provided in accordance with this article.

- k. Unless otherwise provided in the Articles or the Memorandum, if one or more sources of quotation are not able to provide relevant valuations to the Administrative Agent or, if for any reason, the value of any asset of the Fund may not be determined as rapidly and accurately as required, the General Partner (in consultation with the AIFM) may decide to suspend the net asset value calculation and authorise the Administrative Agent not to calculate the net asset value and, consequently, not to determine subscription, redemption and conversion prices.
- l. Securities denominated in a currency other than the Reference Currency will be converted at the exchange rate of the currency concerned applicable on the Valuation Day as agreed from time to time in writing between the General Partner and the Administrative Agent.
- m. For the purpose of this article,
  - (i) Shares to be issued by the Fund will be treated as being in issue as from the time specified by the General Partner on the Valuation Day with respect to which such valuation is made and from such time and until received by the Fund the price therefore will be deemed to be an asset of the Fund;
  - (ii) Shares to be redeemed (if any) will be treated as existing and taken into account until the date fixed for redemption, and from such time and until paid by the Fund the price therefore will be deemed to be a liability of the Fund;
  - (iii) all Investments, cash balances and other assets expressed in currencies other than the Reference Currency of the Fund will be valued after taking into account the market rate or rates of exchange in force as of the Valuation Day; and
  - (iv) where on any Valuation Day the Fund has contracted to:
    - purchase any asset, the value of the consideration to be paid for such asset will be shown as a liability of the Fund and the value of the asset to be acquired will be shown as an asset of the Fund;
    - sell any asset, the value of the consideration to be received for such asset will be shown as an asset of the Fund and the asset to be delivered by the Fund will not be included in the assets of the Fund;provided, however, that if the exact value or nature of such consideration or such asset is not known on such Valuation Day, then its value will be estimated by the General Partner.
- n. All valuation regulations and determinations will be interpreted and made in accordance with Luxembourg Law and the IFRS;
- o. For the avoidance of doubt, the provisions of this section are rules for determining the net asset value per Share and are not intended to affect the treatment for accounting or legal purposes of the assets and liabilities of the Fund or any Share issued by the Fund;

- p. Undrawn Commitments will not be considered as assets of the Fund for the purpose of the calculation of the net asset value of the Fund;
- q. The net asset value per Share may be rounded up or down to the nearest whole cent of the currency in which the net asset value of the relevant Share is calculated;
- r. The Fund intends to comply with the principles set out in CSSF Circular 02/77 with respect to the protection of Investors in case of net asset value calculation error but will apply a tolerance threshold in relation to net asset value calculation error and active breaches or the investment restrictions of 2,5% (two and a half per cent) of the net asset value.

## 11 SUSPENSION OF THE CALCULATION OF THE NET ASSET VALUE

The Fund may at any time and from time to time suspend the determination of the Net Asset Value of Shares and/or the issue of the shares to subscribers and/or the redemption of Shares (if permitted) from its Shareholders, pursuant to article 14 of the Articles.

- a. The net asset value per Share is calculated at least on a quarterly basis or at such frequency as determined by the General Partner (each a “**Valuation Day**”).
- b. Unless otherwise provided in the Memorandum, the Fund may at any time and from time to time suspend the determination of the net asset value of Shares and/or the issue of the Shares to subscribers and/or the redemption of the Shares (if permitted) from its Shareholders in any of the following circumstances:
  - (i) when one or more stock exchanges or other regulated markets, which provide the basis for valuing a substantial portion of the assets of the Fund, or when one or more stock exchanges or other regulated markets in the currency in which a substantial portion of the assets of the Fund is denominated, are closed otherwise than for ordinary holidays or if dealings therein are restricted or suspended;
  - (ii) when, as a result of political, economic, military or monetary events or any circumstances outside the responsibility and the control of the General Partner, disposal of the assets of the Fund is not reasonably or normally practicable without being seriously detrimental to the interests of the Shareholders;
  - (iii) in the case of a breakdown in the normal means of communication used for the valuation of any Investment of the Fund or if, for any exceptional circumstances, the value of any asset of the Fund may not be determined as rapidly and accurately as required;
  - (iv) if, as a result of exchange restrictions or other restrictions affecting the transfer of funds, transactions on behalf of the Fund are rendered impracticable or if purchases and sales of the Fund's assets cannot be effected at normal rates of exchange;
  - (v) when there exists in the opinion of the General Partner a state of affairs where disposal of the Fund's assets, or the determination of the net asset value of the Shares, would not be reasonably practicable or would be seriously prejudicial to the Shareholders;
  - (vi) when for any reason the prices of any Investments owned by the Fund cannot promptly or accurately be ascertained;
  - (vii) during any period when the value of the net assets of any subsidiary of the Fund or any Intermediate Vehicle may not be determined accurately, at the sole discretion of the General Partner;

- (viii) in accordance with, and in the circumstances set out under Section 10k;
  - (ix) when the suspension is required by law or legal process;
  - (x) when for any reason and in its absolute discretion the General Partner (in consultation with the AIFM) determines that such suspension is in the best interests of the Shareholders of the Fund;
  - (xi) upon the convening of a General Meeting, convened for the express purpose of winding-up the Fund.
- c. 14.3 Any such suspension may be notified by the Fund in such manner as it may deem appropriate to the persons likely to be affected thereby.

Any such suspension may be notified by the Fund in such manner as it may deem appropriate to the persons likely to be affected thereby.

## **12 GENERAL MEETINGS OF SHAREHOLDERS OF THE FUND**

- a. The general meeting of Shareholders of the Fund shall be held annually and shall represent the entire body of Shareholders of the Fund. Its resolutions shall be binding upon all the Shareholders. It shall have the broadest powers to order, carry out or ratify acts relating to the operations of the Fund, provided that no resolution shall be passed validly unless approved by the General Partner. It may also be called upon the request of Shareholders representing at least one-tenth (1/10) of the share capital.
- b. In the event, the General Partner is declared bankrupt or insolvent, a general meeting of Shareholders shall be held within thirty (30) days of such declaration in order to appoint a new general partner of the Fund.
- c. The annual general meeting shall be held in accordance with Luxembourg law at the registered office of the Fund in Luxembourg, within six (6) months as of the end of a relevant financial year. Other meetings of Shareholders may be held at such places and times as may be specified in the respective notices of meeting.
- d. Shareholders shall meet in person, by video conference or by conference call or by any other means of communication as may be accepted by the General Partner in accordance with these Articles and upon call by the General Partner pursuant to a notice setting forth the agenda sent at least ten (10) days prior to the meeting to each registered Shareholder at the Shareholder's address in the Register or, if the addressee has individually accepted to receive the convening notices by another means of communication ensuring access to the information, by such means of communication. The giving of such notice to registered Shareholder need not be justified to the meeting. The agenda shall be prepared by the General Partner except in the instance where the meeting is called on the written demand of the Shareholder in which instance the General Partner may prepare a supplementary agenda. A Shareholder attending a meeting through video conference or by conference call or by any other means of communication allowing for their identification, allowing all persons taking part in the meeting to hear one another on a continuous basis and allowing for an effective participation of all such persons in the meeting, are deemed to be present for the computation of the quorums and votes, subject to such means of communication being made available at the place of the meeting.
- e. An attendance list must be kept at all general meetings of Shareholders.
- f. If all Shareholders are present or represented and consider themselves as being duly convened and informed of the agenda, the general meeting may take place without notice of

meeting.

- g. The General Partner may determine all other conditions that must be fulfilled by Shareholder in order to attend any meeting of Shareholders.
- h. The business transacted at any meeting of the Shareholder shall be limited to the matters contained in the agenda (which shall include all matters required by the Laws) and business incidental to such matters.
- i. Each Share is entitled to one vote, in compliance with the laws and these Articles. A Shareholder may act at any meeting of Shareholders by giving a written proxy to another person. Such proxy holder does not need to be a Shareholder and may be a manager of the General Partner or a representative thereof. One person may represent one or several Shareholders.
- j. A Shareholder who is not present or represented in a general meeting can cast their vote in that general meeting by means of a ballot paper (*formulaire*). A ballot paper shall be delivered by any means of communication allowing for the transmission of a written text.
- k. A ballot paper must contain all of the following: (i) name and address of the registered office and/or residence of the relevant Shareholder; (ii) total number of Shares held by the relevant Shareholder; (iii) agenda of the general meeting; (iv) confirmation with respect to each of the proposed resolutions, of the number of Shares for which the relevant Shareholder is abstaining, voting in favour of or voting against such proposed resolution; and (v) name, title and signature of the duly authorised representative of the relevant Shareholder and the date of the ballot paper.
- l. A ballot paper must be received by the Fund no later than five (5) p.m. (Luxembourg time) on the Business Day preceding the day of the general meeting. A ballot paper which does not contain the details specified in the preceding paragraph or which is received by the Fund after the aforementioned deadline shall be void and disregarded for quorum purposes. A ballot paper shall be deemed to have been received by the Fund: (a) when delivered by hand with acknowledgment of receipt, by registered post or by special courier service using an internationally recognised courier company: at the time of delivery to the Fund; or (b) when sent by email, by fax or by mail with acknowledgement of receipt at the time of receipt indicated in the acknowledgement of receipt.
- m. Unless otherwise provided by the laws, the Articles or the Memorandum and subject to the approval by the General Partner, resolutions of the meeting of Shareholder duly convened are passed by a simple majority of the votes of the Shareholder validly cast, as mentioned under paragraph a of this section.
- n. Resolutions of the Shareholders may also be passed in writing. Written resolutions may be documented in a single document or in several separate documents having the same content and each of them signed by one or several Shareholders. Should such written resolutions be sent by the General Partner to the Shareholders for adoption, the Shareholders shall cast their written vote by returning it to the Fund through any means of communication allowing for the transmission of a written text. The quorum and majority requirements set forth above shall apply to the adoption of written resolutions. Resolutions shall be adopted as soon as a sufficient number of votes have been received.

### **13 FISCAL YEAR AND REPORTING**

The Fiscal Year will begin on 1 January and ends on 31 December of each year, except for the first

Fiscal Year which began on the date of incorporation of the Fund and shall end on 31 December 2022.

- a. The Fund will publish annually a report on its activities, on its Investments and on the management of its Investments in accordance with the IFRS and the 2013 Act. The report will include, inter alia:
  - i. audited financial statements, including a balance sheet, income statement, cash flow statement and statement of value of Shareholders' interest in the Fund;
  - ii. a description of the assets of the Fund, a report from the Auditor and the value of the assets of the Fund as per the Fiscal Year end.
- b. The annual report will be sent to Investors upon request free of charge and made available at the Fund's registered office no later than 180 days following the end of each Fiscal Year.
- c. Within 60 days of the end of each quarterly period ending on 31 March, 30 June and 30 September in each year (provided that the General Partner shall use best efforts to provide such reports within 60 days), the General Partner shall prepare and send to each Partner, an unaudited report comprising:
  - i. an unaudited valuation of Investments;
  - ii. capital account statement and statement of cash flows (capital calls and distributions);
  - iii. value of the Shareholder's interest in the Fund.
- d. The following documents are available for inspection by Investors free of charge, during usual business hours, subject to a five (5) Business Days prior written notice, at the registered office of the Fund in Luxembourg, in accordance with the AIFM Directive:
  - i. this Memorandum;
  - ii. the Articles;
  - iii. the latest available annual report;
  - iv. the available quarterly reports;
  - v. the AIFM Agreement;
  - vi. the Investment Management Agreement;
  - vii. the Depositary Agreement;
  - viii. the Central Administration Agreement;
  - ix. a description of any arrangement made by the Depositary to contractually discharge itself of liability in accordance with the AIFM Rules (or a confirmation that no such arrangement exists);
  - x. the latest NAV; and
  - xi. the historical performance of the Fund.
- e. The AIFM will make available to Investors upon request a summary description of the Voting Policy and details of the actions taken on the basis of that Voting Policy.
- f. The AIFM will inform Investors, whether by way of individual communication or through the inclusion of a note in a quarterly or annual report, of:
  - i. any changes to the maximum level of Leverage that may be incurred;
  - ii. the granting to a counterparty of a right of use over the assets of the Fund;
  - iii. any guarantee granted for the account of the Fund to a third-party under the leveraging arrangement;
  - iv. any change to the arrangements made by the Depositary to contractually

- v. discharge itself of liability in accordance with the AIFM Rules; and any other material conflicts of interest identified by the AIFM under article 13(1) para. 3 of the 2013 Act.
- g. The following information will be periodically disclosed by the AIFM to the Investors in accordance with the provisions of the AIFM Rules (whether by way of individual communication or through the inclusion of a note in the annual report):
  - i. the percentage of the Fund's assets which are subject to special arrangements arising from their illiquid nature;
  - ii. any new arrangements for managing the liquidity of the Fund and an overview of the liquidity management process employed by the AIFM;
  - iii. the current risk profile of the Fund and an overview of the risk management systems employed by the AIFM to manage those risks;
  - iv. if applicable, a description of any right to reuse collateral and granted guarantee;
  - v. the total amount of Leverage employed by the Fund calculated in accordance with the gross and commitment methods and any material changes in the information listed in article 21 of the 2013 Act over a relevant Fiscal Year;
  - vi. the total amount of remuneration for the relevant Fiscal Year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries; and
  - vii. the aggregate amount of remuneration broken down by senior management and members of the staff of the AIFM whose actions have a material impact on the risk profile of the Fund.
- h. In addition, the AIFM will inform Investors of the general nature or sources of conflicts of interest to the extent the AIFM's organisational arrangements established to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that any risks of damage to the Partners' interests will be prevented.

## 14 DISTRIBUTION – RECALL OF DISTRIBUTIONS – CLAWBACK

### 14.1 Distribution

- a. The General Partner may from time to time make distributions (“**Distributions**”) from the Fund in accordance with the distribution rules described below and the Day Count Convention. The Fund will operate a “whole fund” waterfall. Distribution of proceeds shall be made to the Shareholders in proportion to their Commitments or paid to the General Partner as an incentive allocation (“**Carried Interest**”) in the following order of priority:
  - i. first, one hundred percent (100%) to the Shareholders until such Shareholders have received cumulative distributions equal to such Shareholder’s aggregate Capital Contributions;
  - ii. second, one hundred percent (100%) to such Shareholders until the cumulative amount distributed to such Shareholders are equal to the Preferred Return for such Shareholders;
  - iii. third, one hundred percent (100%) to the General Partner, as Carried Interest payments, until the General Partner has received cumulative distributions equal to twenty percent (20%) of the sum of distributions made or being made to Shareholders pursuant to the preceding and this paragraph; and
  - iv. thereafter, twenty percent (20%) to the General Partner, as additional Carried Interest payments, and eighty percent (80%) to the Shareholders.
- b. Subject to anything to the contrary provided for in this Memorandum, the General Partner may make payments to Shareholders as distributions of profit or by way of partial or full

compulsory redemption of Shares.

- c. Payments will be made in cash in the Reference Currency. Distributions remaining unclaimed for five (5) years after their declaration will be forfeited and reverted to the Fund.

#### **14.2 Recall of Distributions**

The Fund may require the Shareholders to return Distributions to the Fund to the extent not previously returned in an amount sufficient to satisfy all or any portion of the indemnification and other obligations of the Fund, whether such obligations or liabilities arise before or after the Term or, with respect to any Partner, before or after such Partner's withdrawal from the Fund.

Each Shareholder's aggregate liability under the giveback is limited to an amount equal to thirty percent (30%) of all Distributions received by such Shareholder from the Fund.

No Shareholder shall be required to return to the Fund any amount distributed by the Fund to such Shareholder after the earlier of: (i) the second anniversary of such Distribution (unless notified by the General Partner that there are ongoing proceedings against the Fund); and (ii) the second anniversary of the end of the Term.

#### **14.3 General Partner Clawback**

If upon the liquidation and the final distribution of the Fund (A) the General Partner has received cumulative Distributions in excess of the amount of Carried Interest distributions that it should have received; or (B) any Shareholder has received distributions less than the sum of that such Shareholder's capital contribution and the Preferred Return thereon, then the General Partner must notify the Shareholders of this in writing and contribute to the Fund such difference up to the amount received by the General Partner, less the sum of any taxes paid or payable by the General Partner (or its owners) thereon.

### **15 DISSOLUTION/LIQUIDATION**

- a. The death, bankruptcy, insolvency, dissolution, liquidation, withdrawal, expulsion or removal of a Partner shall not operate to dissolve the Fund.
- b. The Fund shall continue for the Term set out in Section 3 unless dissolved upon the happening of any of the following events:
  - i. the agreement of the General Partner and the Shareholders by way of a Shareholders 66% Consent;
  - ii. the General Partner notifies the Shareholders that, in the reasonable opinion of the General Partner, the continuation of the business of the Fund has been rendered illegal or impracticable by the coming into force of any law, regulation or binding authority and the Shareholders approve the dissolution of the Fund by way of a Shareholders 50% Consent;
  - iii. notice is served on the General Partner by Shareholders representing at least fifty percent (50%) of the total share capital and subject to election by the Shareholders by way of a Shareholders 50% Consent, following Cause;
  - iv. notice is served on the General Partner by Shareholders subject to a Shareholders 75% Consent; or
  - v. such a decision by the General Partner is required under Luxembourg law.
- c. Subject in all cases to compliance with the 1915 Act, upon dissolution of the Fund (for any of the reasons referred to in this section) or at any time during the winding-up of the Fund, the General Partner may act as the Liquidation Agent or appoint such other person or persons

to be the Liquidation Agent, provided that the Shareholders may appoint an alternative Liquidation Agent by way of a Shareholders 50% Consent. The General Partner shall (i) provide, or procure the provision of, to the Liquidation Agent (including any prospective Liquidation Agent), all books of accounts, records, registers, correspondence, documents and other assets relating to the affairs of or belonging to the Fund and (ii) such other information relating to the Fund that the Liquidation Agent (including any prospective Liquidation Agent) may reasonably request.

- d. Upon dissolution of the Fund (for any of the reasons referred to in the paragraphs above), no further business shall be conducted except for such actions as shall be necessary for the winding-up of the affairs of the Fund. The net proceeds of liquidation corresponding to the Fund shall be distributed by the Liquidation Agent to the Partners, provided that the General Partner shall be entitled to a preferred distribution of ten thousand US Dollars (USD 10,000). The Liquidation Agent shall use reasonable efforts to liquidate the Fund within eighteen (18) months.
- e. The remuneration of the Liquidation Agent (if any) as well as the expenses expected in relation to the liquidation of the Fund (such as consulting fees, legal fees and other third-party agent fees) shall be approved by the Advisory Committee.
- f. Assets which are not distributed to the Shareholders immediately upon liquidation will be deposited with the Depositary for a period of nine (9) months from the beginning of the liquidation. Following such period, the assets will be deposited with the *Caisse de Consignation* on behalf of the persons entitled thereto.
- g. In accordance with article 28 of the 2016 Act, if the share capital of the Fund falls below two-thirds (2/3) of the minimum share capital indicated in Section 2.1c hereof, the General Partner must submit the question of the dissolution of the Fund to a general meeting of Shareholders, for which no quorum shall be required and such dissolution shall be decided by simple majority of the votes of the Shares represented at the meeting.
- h. The question of the dissolution of the Fund shall further be referred to the general meeting of Shareholders whenever the share capital falls below one-fourth (1/4) of the minimum capital set by Section 2.1c thereof; in such an event, the general meeting of Shareholders shall be held without any quorum requirements and the dissolution may be decided by Shareholders holding one-fourth of the votes of the Shares represented at the meeting, in accordance with article 28 of the 2016 Act.
- i. Either of the meetings referred to in paragraph g and h must be convened so that it is held within a period of forty (40) days from ascertainment that the net assets of the Fund have fallen below two-thirds or one-fourth of the legal minimum, as the case may be.

## **16 ANTI-MONEY LAUNDERING AND TERRORIST FINANCING REQUIREMENTS**

- a. Measures aimed towards the prevention of money laundering as provided by Luxembourg Law are the responsibility of the General Partner which will be assisted by the Administrative Agent (acting in capacity as registrar and transfer agent).
- b. These measures may require the Administrative Agent to request verification of the identity of any prospective Investor. By way of example, an individual may be required to produce a copy of his passport or identification card duly certified by a competent authority (e.g. embassy, consulate, notary, police officer, solicitor, financial institution domiciled in a country imposing equivalent identification requirements or any other competent authority). In the case of corporate applicants, this may require, amongst others, production of a



certified copy of the certificate of incorporation (and any change of name) and Investor's memorandum and articles of association (or equivalent), a recent list of its shareholders showing a recent stake in its capital, printed on the letterhead of the Investor duly dated and signed, an authorised signature list and an excerpt of the trade register. It should be noted that the above list is not exhaustive and that the Investors may be required to provide further information to the Administrative Agent to ensure the identification of the final beneficial owner of the Securities.

- c. Until satisfactory proof of identity is provided by potential Investors or transferees as determined by the Administrative Agent, it reserves the right to withhold issue or approval of registration of transfers of Securities. Similarly, redemption proceeds will not be paid unless compliance with these requirements has been made in full. In any such event, the Administrative Agent will not be liable for any interest, costs or compensation.
- d. In case of a delay or failure to provide satisfactory proof of identity, the Administrative Agent may take such action as it thinks fit.

## **17 TAXATION**

### **17.1 Certain Luxembourg Tax Considerations**

The following information is based on the laws, regulations, decisions and practice currently in force in Luxembourg and is subject to changes therein, possibly with retrospective effect. This summary does not purport to be a comprehensive description of all Luxembourg tax laws and Luxembourg tax considerations that may be relevant to a decision to invest in, own, hold, or dispose of Securities and is not intended as tax advice to any particular Investor or potential Investor. Prospective Investors should consult their own professional advisers as to the implications of buying, holding or disposing of Securities and to the provisions of the laws of the jurisdiction in which they are subject to taxation. This summary does not describe any tax consequences arising under the laws of any state, locality or other taxing jurisdiction other than Luxembourg.

- a. The Fund
  - i. Under current law and practice, the Fund is not liable to corporate income tax or net wealth tax.
  - ii. No stamp duty or other tax will be payable in Luxembourg on the issue of the Securities, except a fixed registration duty of EUR 75 which may be payable upon the Fund's incorporation or any amendment of its Agreement.
  - iii. The Fund is subject to an annual subscription tax (*taxe d'abonnement*) of 0.01 per cent., calculated and payable quarterly, on the net assets of the Fund at the end of each quarter.
  - iv. Income and gains, if any, received or realized by the Fund from its Investments may be liable to taxation in the state of source, at varying rates, which normally cannot be recovered.
- b. Withholding tax
  - i. Distributions made by the Fund and payments upon redemptions of Securities (subject to the exception below) are not subject to withholding tax in Luxembourg. There is also no withholding tax on the distribution of liquidation proceeds to the Investors.
  - ii. In accordance with the law of 23 December 2005, interest payments made by

Luxembourg paying agents to individual beneficial owners resident in Luxembourg are currently subject to a 20 per cent. withholding tax. Responsibility for withholding such tax will be assumed by the Luxembourg paying agent.

c. Investors

- i. Under current law and practice (except as stated below), Investors are not subject to any Luxembourg capital gains, income, withholding, estate, inheritance or other taxes in Luxembourg, as a result of the mere holding of Securities, except for those domiciled, resident or having a permanent establishment in Luxembourg.
- ii. In the event that the Fund invests in real estate located in Luxembourg or holds important shareholdings in Luxembourg resident companies (and disposes of them within six (6) months of their acquisition), income and gains from these assets may become taxable in the hands of non-resident Investors, subject to the application of double tax treaties.

## 17.2 Exchange of information pursuant to FATCA

- a. The Foreign Account Tax Compliance Act (“**FATCA**”) was enacted into U.S. law in March 2010 as part of the Hiring Incentives to Restore Employment Act. FATCA aims at reducing tax evasion by U.S. citizens and requires foreign financial institutions outside the U.S. (“**FFIs**”) to provide information about financial accounts held, directly or indirectly, by specified U.S. persons to the U.S. Internal Revenue Service (“**IRS**”) on an annual basis. A 30 per cent. withholding tax is imposed on certain U.S. sources of income of any FFI that fails to comply with this requirement (“**FATCA Withholding**”).
- b. To implement FATCA in Luxembourg, Luxembourg entered into a so-called Model 1 Intergovernmental Agreement (“**IGA**”) with the U.S., and a memorandum of understanding in respect thereof, on 28 March 2014. The IGA was implemented in Luxembourg domestic law by Law of 24 July 2015 (the “**Luxembourg FATCA Law**”). Luxembourg FFIs which comply with the requirements of the IGA, will not be subject to FATCA Withholding.
- c. Under the Luxembourg IGA, Luxembourg FFIs are required to perform certain due diligence and monitoring of Investors, and to report to the Luxembourg tax authorities, on an annual basis information, about financial accounts held by: (a) specified U.S. persons; (b) certain U.S. controlled entities; and (c) non-U.S. financial institutions that do not comply with FATCA. Under the Luxembourg IGA, such information will subsequently be remitted by the Luxembourg tax authorities to the IRS.
- d. It is the intention of the Fund to procure that it is treated as complying with the requirements that FATCA and the Luxembourg IGA imposes upon it. However, no assurance can be provided that the Fund will be able to comply with such requirements and, in the event that it is not able to do so, the Fund could be exposed to fines which may reduce the amounts available to it to make payments to its Investors. Investors may be required to provide information to the Fund to comply with its reporting obligations under the IGA. In furtherance of the Fund's compliance with the IGA and the Luxembourg FATCA Law in accordance with the foregoing, the Fund, the General Partner or its delegate (including the Administrative Agent and/or relevant tax advisers) may:
  - i. request information or documentation, including self-certification forms, a global intermediary identification number, if applicable, or any other valid evidence of an Investor's FATCA registration with the IRS or a corresponding exemption, in order to ascertain such Investor's FATCA status;

- ii. report information concerning an Investor and his account holding in the Fund to the Luxembourg tax authorities, if such account is deemed a U.S. reportable account under the Luxembourg IGA; and
  - iii. report information to the Luxembourg tax authorities concerning payments to account holders with the FATCA status of non-participating foreign financial institution.
- e. Investors should contact their own tax advisers regarding the application of FATCA to their particular circumstances and their investment in the Fund .

### **17.3 Exchange of information pursuant to CRS**

- a. The Organisation for Economic Co-operation and Development has developed a new global standard for the annual automatic exchange of financial information between tax authorities (the "CRS"). The CRS has been implemented in Luxembourg via the law dated 18 December 2015 concerning the automatic exchange of information on financial accounts and tax matters and implementing the EU Directive 2014/107/EU. The regulation may impose obligations on the Fund and its Investors, if the Fund is actually regarded as a reporting "Financial Institution" under the CRS, so that the latter could be required to conduct due diligence and obtain (among other things) confirmation of the tax residency (through the issuance of self-certifications forms by the Investors), tax identification number and CRS classification of the Investors in order to fulfil its own legal obligations.
- b. The CRS has been incorporated in the revised EU Directive on Administrative Cooperation (EU Directive 2011/16) ("**DAC**") which effectively translates the CRS into EU law. Luxembourg implemented the DAC in Luxembourg domestic law by Law of 18 December 2015 ("**Luxembourg CRS Law**").
- c. It is the intention of the Fund to procure that it is treated as complying with the requirements that the Luxembourg CRS Law places upon it. However, no assurance can be provided that the Fund will be able to comply with the Luxembourg CRS Law and, in the event that it is not able to do so, it could be exposed to fines which may reduce the amounts available to it to make payments to Investors. Investors will be required to provide certain information to the Fund to comply with the reporting obligations under the Luxembourg CRS Law. In furtherance of compliance with the Luxembourg CRS Law in accordance with the foregoing, the Fund may:
  - i. request information or documentation, including self-certification forms, a tax identification number (if applicable), or any other relevant information in order to ascertain such Investor's status; and
  - ii. report information concerning an Investor and its account holding in the Fund to the Luxembourg tax authorities if such Investor is a reportable accountholder under the Luxembourg CRS Law.
- d. Investors should contact their own tax advisers regarding the application of the Luxembourg CRS Law to their particular circumstances and their investment in the Fund.
- e. Each prospective Investor and each Investor should consult its own tax advisers regarding the requirements under CRS with respect to its own situation as well as the determination of its tax residence.
- f. Each Investor and each transferee of an Investor's Securities in the Fund shall furnish

(including by way of updates) to the Fund, or any or any third-party designated by the Fund (a “**Designated Third Party**”), in such form and at such time as is reasonably requested by the Fund (including by way of electronic certification) any information, representations, waivers and forms relating to the Investor (or the Investor's direct or indirect owners or account holders) as shall reasonably be requested by the Fund or the Designated Third Party to assist it in complying with the relevant CRS requirements.

- g. As mentioned above, self-certification forms may need to be provided by some of the Investors. The self-certification forms in order to be valid must be: (i) signed by the relevant Investor itself (where an individual) or a person authorised to sign on behalf of the Investor (where an entity); (ii) dated; and (iii) include:
  - i. where the Investor is an individual: its name, residence address, jurisdiction(s) of residence for tax purposes, tax identification number(s) and its date of birth; or
  - ii. where the Investor is an entity: its name, address, jurisdiction(s) of residence for tax purposes and tax identification number(s).
- h. Concurrently, if the relevant Investor is regarded as a passive "Non-Financial Entity" under the CRS, separate individual self-certification forms would be needed for each of their Controlling Persons.
- i. In this context, the term "Controlling Person" corresponds to the term "beneficial owner" as elaborated under recommendation 10 of the Financial Action Task Force recommendations dated February 2012 (the Recommendation) and translated accordingly into Luxembourg AML regulation dated 12 November 2004, as amended. According to the Recommendation, a controlling ownership interest depends on the ownership structure of the entity. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25 per cent.). In case of a legal person/partnership (and equivalent arrangement), may be regarded as the "Controlling Person" any natural person who exercises control through direct or indirect ownership of the capital or profits of the legal person/partnership (and equivalent arrangement), voting rights in the legal person/partnership (and equivalent arrangement). If there are no natural person(s) who exercise control of the entity by ownership or other means, then the "Controlling Person" will be the natural person(s) who otherwise exercises control over the management of the entity (e.g. the senior managing official of the entity).
- j. The Fund or the Designated Third-Party may disclose information regarding any Investor (including any information provided by the Investors pursuant to this Section) to any person to whom information is required or requested to be disclosed by any taxing authority or other governmental agency including transfers to jurisdictions which do not have strict data protection or similar laws, to enable the Fund to comply with any applicable law or regulation or agreement with a governmental authority.
- k. By subscribing for Securities, each Investor irrevocably waives all rights it may have under applicable bank secrecy, data protection and similar legislation that would otherwise prohibit any such disclosure and warrants that each person whose information it provides (or has provided) to the Fund or the Designated Third-Party has been given such information, and has given such consent, as may be necessary to permit the collection, processing, disclosure, transfer and reporting of their information as set out in this Section and Section 18 below.

#### 17.4 Certain U.S. Federal Income Tax Considerations

- a. The summary below discusses only certain U.S. federal income tax considerations of the acquisition, ownership and disposition of Securities in the Fund , and is based upon the U.S. Internal Revenue Code of 1986, as amended (the “Code”), judicial decisions, Treasury Regulations (the “Regulations”) and rulings in existence on the date hereof, all of which are subject to change. The summary below does not discuss state, local or non-U.S. tax considerations, nor does it discuss all U.S. federal income tax considerations that may be relevant to prospective Investors, some of which may be subject to special rules, such as Non-U.S. Investors (defined below), governmental entities, bank holding companies, insurance companies, Investors that will hold Securities in the Fund as part of a straddle, hedging or conversion transaction, Investors that will own (directly, indirectly or by attribution) 10 per cent. or more of the Securities in the Fund, entities treated as partnerships or S Corporations or trusts for U.S. federal income tax purposes and, except as specifically addressed below, organisations exempt from U.S. federal income taxation. Such Investors are urged to consult their own tax advisers as to the applicability of such special rules, including the application of the alternative minimum tax or any tax on “net investment income.”
- b. For purposes of this discussion, a “U.S. Investor” means a beneficial owner of Securities that, for U.S. federal income tax purposes, is: (i) an individual citizen or resident of the United States; (ii) a corporation created or organized under the laws of the United States or any state thereof; (iii) an estate the income of which is subject to U.S. federal income tax without regard to its source; or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or the trust has elected to be treated as a domestic trust for U.S. federal income tax purposes.
- c. A “U.S. Tax-Exempt Investor” means a beneficial owner of Securities that: (i) is either:
  - i. a corporation created or organised under the laws of the United States or any state thereof; or
  - ii. a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or the trust has validly elected to be treated as a domestic trust for U.S. federal income purposes; and (ii) is generally exempt from U.S. federal income taxation under Section 401 or 501 of the Code.
- d. A “Non-U.S. Investor” means a beneficial owner of Securities that is not a U.S. Investor.
- e. The U.S. federal income tax treatment of a partner in an entity treated as a partnership for U.S. federal income tax purposes that holds Securities will depend on the status of the partner and the activities of the partnership. Prospective Investors that are entities treated as partnerships for U.S. federal income tax purposes should consult their tax advisers concerning the U.S. federal income tax consequences to their partners of the acquisition, ownership and disposition of Securities by the partnership.

**THE SUMMARY OF U.S. FEDERAL INCOME TAX CONSEQUENCES SET OUT BELOW IS FOR GENERAL INFORMATION ONLY. IT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE CODE. ALL PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISERS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING,**

**AND DISPOSING OF THE SECURITIES, THE APPLICABILITY AND EFFECT OF STATE, LOCAL, NON-U.S. AND OTHER TAX LAWS AND POSSIBLE CHANGES IN TAX LAW.**

**17.5 Qualification of the Fund**

- a. Unless otherwise stated in this Memorandum, the General Partner intends to be treated as a partnership for U.S. federal income tax purposes and not as an association taxable as a corporation. An entity that would otherwise be classified as a partnership for U.S. federal income tax purposes may nonetheless be taxable as a corporation if it is a “publicly traded partnership” and it does not qualify for the “90 per cent. passive income” exclusion, described below. The Fund intends to operate in such a manner that it should either not be a publicly traded partnership or, alternatively, qualify for the 90 per cent. passive income exclusion for each taxable year of the Fund, although there can be no assurance in this regard.
- b. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). In general, interests in a partnership will be considered readily traded on a secondary market (or the substantial equivalent thereof) if prospective buyers or sellers have an opportunity to buy or sell interests in the partnership, including through withdrawals, in a time frame and with the regularity and continuity that is comparable to trading on a securities market.
- c. The Fund should qualify for the 90 per cent. passive income exclusion in a taxable year so long as at least 90 per cent. of its gross income for the year and for each prior year, from and after the first year in which it is publicly traded, consists of “qualifying income.” “Qualifying income” includes (i) gains from the sale of stock, securities and non-U.S. currencies, (ii) interest (other than interest derived in the conduct of a financial or insurance business), dividends and payments with respect to securities loans, (iii) gains from options, futures or forward contracts derived with respect to the business of investing in stock, securities and non-U.S. currencies, (iv) in the case of a partnership a principal activity of which is the buying and selling of commodities (other than as a dealer) and futures, forwards and options with respect to commodities, income and gains from such investments, and (v) certain other investment income as set forth in the Regulations under Section 7704 of the Code. It is not clear whether QEF (as defined below) inclusions and Subpart F inclusions would be treated as qualifying income for this purpose.
- d. If the IRS were to determine that for a given taxable year the Fund did not qualify for the 90 per cent. passive income exclusion and the Fund was otherwise a publicly traded partnership, or if the Fund elects to be classified as a corporation for U.S. federal income tax purposes, the Fund would be taxable in a manner similar to a U.S. Tax Holding Company as discussed below. Moreover, distributions of such income generally would be treated as dividend income when received by U.S. Shareholders to the extent of the current or accumulated earnings and profits of the Fund, U.S. Investors would not be entitled to report profits or losses recognized by the Fund, and the Fund would likely be treated as a PFIC and/or CFC (discussed below), among other potential adverse consequences. The remainder of this discussion assumes that the Fund will be treated as a partnership for U.S. federal income tax purposes. Notwithstanding anything to the contrary in this Memorandum, the classification of the Fund for U.S. federal income tax purposes and the U.S. federal income tax consequences of the acquisition, ownership or disposition of Securities in the Fund may be discussed in this Memorandum.
- e. Upon the sale or other disposition of property by the Fund, the Fund will recognise a gain

or loss in an amount equal to the difference between the amount realised and the Fund's tax basis in the property sold. The gains or losses realised by the Fund from the sale or other disposition of property held as a capital asset generally would be treated as capital gains or losses. However, if the Fund (or an entity or arrangement in which the Fund is a partner, member or other type of investor) were treated as a “dealer” with respect to all or part of its property (meaning that it was viewed for U.S. federal income tax purposes as holding such property for sale to customers in the ordinary course of its business), then all the gains from such property would be treated as ordinary income. Long-term capital gains, other than certain types of depreciation recapture, are taxable at a reduced rate for individuals.

- f. There are a number of uncertainties in the U.S. federal income tax law relating to debt restructuring. In general, a “significant modification” of a debt obligation acquired by the Fund at a discount may be treated as a taxable event, with the resulting gain or loss measured by the difference between the principal amount of the debt after the modification and such Fund's tax basis in such debt before the modification. However, other than for certain “safe harbor” modifications specified in the Treasury Regulations, the determination of whether a modification is “significant” is based on all of the facts and circumstances. Therefore, it is possible that the IRS could take the position that the restructuring of a debt obligation acquired by the Fund at a discount amounts to a “significant modification” that should be treated as a taxable event even if the Fund did not so treat the restructuring on its tax return.
- g. Under the enacted U.S. tax reform legislation, U.S. Investors that maintain certain types of financial statements and use the accrual method of accounting for U.S. federal income tax purposes generally will be required to include certain amounts in income no later than the time such amounts are reflected on their financial statements. The application of this rule may require such U.S. Investors to include certain amounts paid on debt obligations in income earlier than would otherwise in the absence of such rule, although the precise application of this rule is not entirely clear at this time. However, recently released proposed regulations generally would exclude, among other items, original issue discount (whether or not de minimis) from the applicability of this rule. Although the proposed regulations generally will not be effective until taxable years beginning after the date on which they are issued in final form, taxpayers generally are permitted to elect to rely on their provisions currently. U.S. Investors that use the accrual method of accounting are urged to consult their tax advisers regarding the potential applicability of this rule to their particular situations.
- h. All or a portion of the Fund’s income may constitute ordinary income and losses, such as interest income from debt obligations. The Fund may also acquire debt obligations with “market discount”. Upon disposition of such an obligation, a U.S. Investor generally would be required to treat gain realized as interest income to the extent of the market discount which accrued during the period the debt obligation was held the Fund.
- i. The Fund may invest in options, futures contracts and options on futures contracts, certain of which may be characterized for U.S. federal income tax purposes as “Section 1256 Contracts.” Any gains or losses with respect to a Section 1256 Contract are generally considered 60 per cent. long-term and 40 per cent. short term capital gain or loss (“60/40”), regardless of the actual holding period of the individual contract, although gains or losses with respect to a Section 1256 Contract may be ordinary in character if the contract is used in certain types of hedging transactions. In addition, any Section 1256 Contracts held by the Fund at the end of each taxable year are “marked- to-market” (i.e., treated for U.S. federal income tax purposes as if sold for their fair market value on the last business day of each taxable year) and an resulting gain or loss is treated as 60/40 gain or loss and subject to U.S. federal income tax at that time.
- j. In general, if an individual taxpayer incurs a net loss for a year with respect to a Section

1256 Contract, the taxpayer may elect to carry back such net loss up to three years and deduct such net loss against any net capital gain from Section 1256 Contracts included in the taxpayer's income in such prior years. Losses so carried back are treated as 60/40 losses. To the extent that such losses are not used to offset gains on Section 1256 Contracts in a carryback year, they will carry forward indefinitely as losses on Section 1256 Contracts in future years.

- k. **Straddles:** Hedging transactions undertaken by the Fund may result in “straddles” for U.S. federal income tax purposes. The straddle rules may affect the character of gain (or loss) realized by the Fund. In addition, loss realized by the Fund on positions that are part of a straddle may be deferred under the straddle rules, rather than being taken into account in calculating the taxable income for the taxable year in which such loss is realized. In addition, the Fund may be required to capitalize, rather than deduct currently, any interest expense on indebtedness incurred or continued to purchase or carry any positions that are part of a straddle. The transactions may increase the amount of short-term capital gain realized by the Fund which is taxed as ordinary income when distributed to U.S. Investors.

The Fund may make one or more of the elections available under the Code which are applicable to straddles. If the Fund makes any of the elections, the amount, character and timing of the recognition of gain or loss from the affected straddle positions may be determined under rules that vary according to the election(s) made. The rules applicable under certain of the elections accelerate the recognition of gain or loss from the affected straddle positions.

Because application of the straddle rules may affect the character and timing of the Fund's gains, losses and deductions, the amounts allocated to U.S. Investors as ordinary income or long-term capital gain may be increased or decreased substantially as a result of such hedging transactions.

- l. **Possible “Mark-to-Market” Election:** To the extent that the Fund is directly engaged in a trade or business as a trader in “securities”, it may elect under Section 475 of the Code to “mark-to-market” the securities held in connection with such trade or business. Under such election, securities held by the Fund at the end of each taxable year will be treated as if they were sold by the Fund for their fair market value on the last day of such taxable year, and gains or losses recognized thereon will be treated as ordinary income or loss. Moreover, even if the Fund determines that its securities activities will constitute trading rather than investing, there can be no assurance that the IRS will agree, in which case the Fund may not be able to mark-to-market its positions.
- m. For U.S. federal income tax purposes, a U.S. Investor's allocable share of items of income, gain, loss, deduction or credit of the Fund will be governed by this Memorandum if such allocations have “substantial economic effect” or are determined to be in accordance with such U.S. Investor's interest in the Fund. If the U.S. Internal Revenue Service successfully challenged the allocations made by the Fund, the re-determination of the allocations to a particular U.S. Investor for U.S. federal income tax purposes could have adverse tax consequences to such U.S. Investor.
- n. Each U.S. Investor may (subject to certain limitations) be entitled to deduct its allocable share of the Fund's losses to the extent of its tax basis in its interests in the Fund at the end of the tax year of the Fund in which such losses are recognized. However, U.S. Investors will not be entitled to make any deduction for depreciation of any real property acquired by the Fund that is land, other than improvement or physical development on such land, regardless of whether the Fund is treated as a “dealer” with respect to such property. A U.S. Investor's tax basis in its interests in the Fund is, in general, equal to the amount of cash



such U.S. Investor has contributed to the Fund, increased by the U.S. Investor's proportionate share of income and liabilities of the Fund, and decreased by the U.S. Investor's proportionate share of cash distributions, losses and any reduction in such U.S. Investor's share of liabilities.

- o. If cash (including in certain circumstances “marketable securities”) distributed to a U.S. Investor in any year, including for this purpose any reduction in that Investor's share of the liabilities of the Fund, exceeds that U.S. Investor's share of the taxable income of the Fund for that year, the excess will constitute a return of capital and will be applied to reduce the tax basis of that U.S. Investor's interest in the Fund. Any distribution in excess of such basis will result in taxable gain. In general, distributions (other than liquidating distributions) of property other than cash and, in certain circumstances, “marketable securities” will reduce the basis (but not below zero) of a U.S. Investor's interests in the Fund by the amount of the Fund’s basis in such property immediately before its distribution but will not result in the realisation of taxable income to the U.S. Investor.
- p. In the case of U.S. Investors that are individuals, estates, trusts or certain types of corporations, the ability to utilise any tax losses generated by the Fund may be limited under the excess business loss limitation in Section 461(l) of the Code, the “at risk” limitation in Section 465 of the Code, the passive activity loss limitation in Section 469 of the Code and / or other provisions of the Code. In addition, a U.S. Investor's ability to deduct capital losses generated by the Fund is subject to limitations. Furthermore, certain U.S. Investors may be subject to limitations on the ability to utilise certain specific items of deduction attributable to the investment activities of the Fund (as opposed to its activities that represent a trade or business for U.S. federal income tax purposes). Deductions for the Fund’s expenses and management and performance fees may be treated as miscellaneous itemised deductions with respect to which, under the enacted U.S. tax reform legislation, individuals generally will not be entitled to a deduction for taxable years beginning after 31 December 2017 to 31 December 2025 (and, for taxable years beginning after 31 December 2025, other limitations on such deductions may apply). Any “investment interest” expense allocable to a U.S. Investor will not be deductible to the extent it exceeds the U.S. Investor's “net investment income” (as specially calculated for these purposes).
- q. In addition, under the enacted U.S. tax reform legislation, deductions are disallowed with respect to business interest expense that exceeds the sum of business interest income and 30 per cent. of the adjusted taxable income of the business, which is its taxable income computed without regard to business interest income or expense, net operating losses, or the pass-through income deduction (and for taxable years before 2022, excludes depreciation and amortisation). Certain real estate businesses can elect out of these rules. Business interest includes any interest on indebtedness related to a trade or business, but excludes investment interest, to which separate limitations apply.
- r. It is not possible to predict the extent to which any of the foregoing provisions of the Code will be applicable or the extent to which tax losses will be allocated to the U.S. Investors, since that will depend upon the exact nature of the Fund’s future operations and the individual tax positions of such U.S. Investors. Prospective Investors should consult with their own tax advisers regarding the application of these rules (and any other rules limiting their ability to deduct losses or expense associated with their interest) to them.
- s. A U.S. Investor that sells or otherwise disposes of an interest in the Fund in a taxable transaction generally will recognize gain or loss equal to the difference, if any, between the adjusted basis of the interest in the Fund and the amount realised from the sale or disposition. The amount realised will include the U.S. Investor's share of the Fund's liabilities outstanding at the time of the sale or disposition. Subject to the PFIC and CFC (defined

below) rules, if the U.S. Investor holds the interest in the Fund as a capital asset, gain or loss will generally be treated as capital gain or loss except to the extent attributable to the U.S. Investor's share of "unrealised receivables" and "inventory items" of the Fund. Any capital gain or loss will generally be long-term capital gain or loss if the U.S. Investor received the interest in the Fund solely in exchange for a capital contribution and held the interest in the Fund for more than one year on the date of such sale or disposition; provided that a capital contribution by the U.S. Investor within the one-year period ending on such date will cause part of such gain or loss to be short term. The deductibility of capital losses is subject to limitations.

- t. PFICs and CFCs. As discussed in more detail below, certain Funds may invest in a corporation(s) that is/are treated, for U.S. tax purposes, as a passive foreign investment company (a PFIC) or a controlled foreign company (a CFC). In the case of PFICs, a U.S. Investor's share of certain distributions from such corporations and gains from the sale by the Fund of interests in such corporations (or gains from the sale by a U.S. Investor of an interest in the Fund) could be subject to an interest charge and subject to certain other disadvantageous tax treatment unless certain elections are made and maintained (as discussed further below). In the case of CFCs, all or a portion of the income of such corporations (whether or not distributed) could be imputed currently as ordinary income to certain U.S. Investors. Furthermore, in the case of PFICs and CFCs, gains from the sale by the Fund of an interest in such corporations (or gains recognized by certain U.S. Investors on the sale of their interests in the Fund) could be characterized as ordinary income (rather than as capital gains) in whole or in part (as discussed below). Under the enacted U.S. tax reform legislation, a corporate 10 per cent.
- u. U.S. Investor may be allowed a deduction equal to the amount of the foreign source portion of a dividend paid by (or the amount of gain treated as a dividend for U.S. federal income tax purposes from sale of stock in) certain foreign corporations that are not PFICs.
- v. Moreover, as discussed above, the Fund may invest substantially all of their assets in one or more Holding Companies. Such a U.S. Tax Holding Company would likely be classified as PFIC for U.S. federal income tax purposes unless such U.S. Tax Holding Company is treated as a CFC (described below).
- w. If a U.S. Tax Holding Company were classified as a PFIC, U.S. taxable Investors would be subject to U.S. federal income taxation under one of two alternative tax regimes. Under the first, U.S. Investors generally would not be subject to U.S. federal income tax on income and gains realized by the U.S. Tax Holding Company until such amounts are actually distributed by the U.S. Tax Holding Company. Distributions from the U.S. Tax Holding Company, as well as gains recognized by U.S. Investors on the sale, liquidation or other disposition of any portion of their interests in the U.S. Tax Holding Company (including through the sale, liquidation or other disposition of any portion of their interests in the Fund) generally would be subject to tax at ordinary income tax rates. In addition, each U.S. Investor would generally be required to pay an interest charge to the IRS on the U.S. federal income tax payable by such Investor in respect of such gain, and interest charges could also apply on the U.S. federal income tax payable by such Investor in respect of all or a portion of such distributions.
- x. Under the second regime, a U.S. Investor in the U.S. Tax Holding Company making a "qualified electing fund" (QEF) election with respect to its interest in the U.S. Tax Holding Company would be taxed currently (at applicable ordinary income and capital gains tax rates) on its pro rata share of the ordinary earnings and net capital gains realized by the U.S. Tax Holding Company (regardless of whether any such amounts are actually distributed to such Investor). Such Investor generally should not be subject to any further tax when such

amounts are actually distributed by the U.S. Tax Holding Company. Further, the electing U.S. Investor's gain realized from the sale, liquidation or other disposition of its interest in the U.S. Tax Holding Company should be treated as capital gain income.

- y. To be effective, a QEF election must be filed, subject to certain limitations, by the due date (plus extensions) for filing the U.S. Investor's federal income tax return for any tax year in which such Investor holds an interest in the U.S. Tax Holding Company (certain adverse tax consequences may apply, however, if the QEF election is not made for the first tax year in which the interest is acquired). This election will only be effective if the U.S. Tax Holding Company provides the electing U.S. Investor with an annual information statement including, among other things, the Investor's pro rata share of the U.S. Tax Holding Company's ordinary earnings and net capital gains for the year (or sufficient information to allow the Investor to calculate such amounts). There can be no assurance that the U.S. Tax Holding Company will furnish such information.
- z. It should be noted that, while a QEF election results in tax treatment somewhat similar to that of a partnership in that ordinary income and capital gains realized by the U.S. Tax Holding Company are immediately passed through and taxed at ordinary income and capital gains rates in the hands of the electing U.S. Investor, the PFIC/QEF regime and the partnership regime are not identical. Where a U.S. Investor holds at least 10 per cent. of the (by vote or value) interests in the U.S. Tax Holding Company, and such U.S. Investors in aggregate own (actually or constructively) more than 50 per cent., by vote or value, of the total interests in the U.S. Tax Holding Company, such 10 per cent. U.S. Investor will not be entitled to make a QEF election. Rather, such Investor generally will be subject to current taxation at ordinary income tax rates on its pro rata share of the passive investment income realized by the U.S. Tax Holding Company (and certain other income subject to taxation under the CFC rules, including, among other things, "global intangible low-taxed income"), regardless of whether such income is actually distributed to the Investor; such Investor also may be subject to tax at ordinary income rates on all or a portion of the gain realized by such Investor from the sale, liquidation or other disposition of its interest in the U.S. Tax Holding Company (including through the sale, liquidation or other disposition of any portion of their interests in Fund). U.S. Investors are urged to consult their own tax advisers concerning their potential tax treatment under the above rules, including under the PFIC and QEF rules.
- aa. U.S. Investors should also be aware that the Fund and/or a U.S. Tax Holding Company may from time to time acquire interests in funds (or other entities) organized in jurisdictions other than the United States which are not or may not be classified as partnerships under U.S. federal income tax principles. Furthermore, the Fund or U.S. Tax Holding Company may not be in a position to cause non-U.S. funds in which it has acquired interests to make filings with the IRS which may be necessary to allow certain of them to be treated as partnerships for U.S. federal income tax purposes. It should be further noted that if an underlying fund (or other entity) is classified for U.S. federal income tax purposes as a corporation, it also may be classified as a PFIC and a U.S. Investor likely will not be in a position to make a QEF election with respect to such underlying fund or entity (because the underlying fund or other entity is either unable or unwilling to provide the necessary information to enable such election). In such cases, U.S. Investors would be subject to the tax treatment under the PFIC rules in respect of their allocable shares of distributions from, or gain from sales or exchanges of the interests in, such underlying entities, without the benefit of a QEF election.
- bb. U.S. Filing Requirement: Certain U.S. federal tax filing requirements may apply with respect to an investment in the Fund. For instance, U.S. Investors may be subject to reporting requirements in connection with any Investments by the Fund in non-U.S. corporations and certain other non-U.S. financial assets, including pursuant to FATCA. In the event that an Investor that is required to file such information returns fails to do so, such Investor could

be subject to penalties. The foregoing discussion is only a brief summary of certain information reporting and filing requirements. Substantial penalties may apply if the required reports or other filings are not made on time. Prospective Investors are urged to consult their own tax advisers regarding these and other possible reporting requirements.

- cc. Foreign Currency: The Fund may recognise foreign currency gain or loss. U.S. Investors' shares of foreign currency gain or loss will generally be treated as ordinary income or loss, and not as capital gain or loss. U.S. Investors should consult with their own tax advisers with respect to the tax treatment of foreign currency gain or loss.
- dd. Foreign Tax Credit: A U.S. Investor's allocable share of any foreign taxes imposed on the Fund in respect of dividends, interest, capital gains or other income received by the Fund generally will be treated as a foreign income tax which the Investor may elect to deduct in computing its U.S. federal income tax liability or, subject to generally applicable limitations and conditions under the Code, to credit against such liability. However, U.S. Investors will not generally be entitled to a foreign tax credit with respect to foreign taxes paid by a U.S. Tax Holding Company or an underlying fund (or other entity) treated as a foreign corporation for U.S. federal income tax purposes. The rules for determining eligibility for and limits on foreign tax credits are extremely complex and depend on a number of factors that are unique to each U.S. Investor's own circumstances. U.S. Investors should consult their own tax advisers regarding all aspects of the rules regarding foreign tax credits, and the potential availability to them of foreign tax credits with respect to the income or taxes of the Fund.

## **17.6 U.S. Tax-Exempt Investors**

- a. U.S. Tax-Exempt Investors generally are subject to tax on their allocable share of “unrelated business taxable income” (“**UBTI**”). UBTI includes income from an unrelated trade or business regularly carried on and income from “debt-financed” property. If a U.S. tax-exempt entity's acquisition of an interest in a partnership or other transparent entity is debt-financed, or the entity incurs “acquisition indebtedness” that is allocated to the acquisition of an investment by the entity, then UBTI would include a percentage of the gross income (less the same percentage of deductions) derived from the investment regardless of whether the income would otherwise be excluded from UBTI. A U.S. Tax-Exempt Investor may incur UBTI as a result of, among other things, borrowings incurred, trade or business activities conducted, and/or fees received or deemed received by the Fund or a transparent entity owned by the Fund.
- b. UBTI is taxed at the marginal U.S. tax rates to which U.S. taxable corporations are subject. Charitable remainder trusts are subject to an excise tax equal to 100 per cent. of the amount of UBTI that they incur. It is possible that the Fund may generate UBTI. All prospective U.S. Tax-Exempt Investors are urged to consult their tax advisers regarding an investment in the Fund.
- c. Any U.S. Tax-Exempt Holder generally owning 10 per cent. or more of the total vote or value of the shares of a foreign corporation will be required to file annually Form 5471 (Information Return of U.S. Persons with Respect to Certain Foreign Corporations) with the IRS. Such information return requires certain disclosures concerning the filing shareholder, other shareholders, and the corporation. The Fund have not committed themselves to provide the information concerning the Fund or its shareholders necessary to complete such return. Failure to file such information with the IRS may subject such U.S. Tax-Exempt Investors to penalties (generally not to exceed US\$50,000). U.S. Tax-Exempt Investors should consult their tax advisers with respect to these and any other reporting requirement that may apply to an acquisition of Securities.

- d. Certain U.S. Federal Income Tax Considerations Applicable to Non-U.S. Investors
- e. Prospective Investors that are Non-U.S. Investors that invest directly in the Fund generally will be subject to U.S. federal income tax each year only on their distributive share of the taxable income of the Fund, if any, that is deemed to be “effectively connected” with a U.S. trade or business as if they were U.S. citizens or residents, regardless of whether the Fund makes any cash distributions.
- f. A withholding tax at the highest applicable U.S. federal income tax rate generally will be imposed on a Non-U.S. Investor's allocable share of any taxable income of the Fund that is “effectively connected” with a U.S. trade or business (whether or not such income is distributed). Such withholding tax may be claimed as a credit against such Non-U.S. Investor's U.S. tax liability. The gain on withdrawal (complete or partial) of an interest in the Fund generally will (under recently enacted tax reform legislation) be taxed as effectively connected income to the extent that such Non-U.S. Investor would have been allocated effectively connected income if the Fund sold all of its assets for fair market value as of the date of the withdrawal. Further, if any portion of the gain on any withdrawal of an interest in the Fund would be treated as effectively connected income (or if certain certification requirements related to effectively connected income are not met), the transferee of an interest in the Fund generally would be required to withhold 10 per cent. of the amount realized on the withdrawal unless the transferor certifies that the transferor is not a foreign person. If the transferee fails to withhold the correct amount, the Fund would be required to deduct and withhold from distributions to the transferee an amount equal to the amount the transferee failed to withhold. Many issues and the overall effect of this new legislation on the Funds are uncertain, and potential Investors in the Fund are urged to consult their tax advisers regarding all aspects of this legislation as it affects their particular circumstances.
- g. In addition, to the extent that the Fund realizes any fixed, determinable, annual or periodical income (such as interest and dividend income) from U.S. sources that is not effectively connected with a U.S. trade or business, such income generally will be subject to a 30 per cent. withholding tax unless, in the case of certain interest income, such withholding tax is eliminated under the “portfolio interest” rules contained in Section 871 or 881 of the Code.
- h. Prospective Investors that are foreign corporations should also be aware that the 30 per cent. U.S. “branch-profits tax” and “branch-level interest tax” imposed by Section 884 of the Code could apply to an investment in the Fund by a corporate Non-U.S. Investor.
- i. The Foreign Investment in Real Property Tax Act of 1980, as amended, imposes a tax on gain realised on disposition by a foreign person of certain U.S. real property interests (“**USRPIs**”) by treating such gain as effectively connected income, generally giving rise to the tax consequences described above. A USRPI generally includes both a direct investment in U.S. real property (or an investment in a partnership holding such real property), and an investment in the stock of a domestic corporation if the corporation is a “United States real property holding company” (“**USRPHC**”). A USRPHC generally includes any domestic corporation if U.S. real property represents more than one-half of the aggregate value of its business assets and real property assets at any time during the preceding five years (or shorter period during which the Fund has held an interest in the corporation). A USRPI held by a partnership is deemed to be owned proportionately by its partners. To the extent any assets of the Fund are considered USRPIs, gain realised by a Non-U.S. Investor on a sale or other disposition of an interest in the Fund may be taxed as effectively connected income to the extent the gain is attributable to such assets (and may also be subject to a U.S. federal withholding tax).

- j. As a foreign corporation, a U.S. Tax Holding Company generally will not be subject to U.S. federal income taxation on income or gain realized by it from trading and investment activities provided that the U.S. Tax Holding Company is not engaged in, or deemed to be engaged in, a U.S. trade or business to which such income or gain is treated as effectively connected. In the event that the U.S. Tax Holding Company were engaged in, or deemed to be engaged in, a U.S. trade or business in any year, the U.S. Tax Holding Company (but not any of the shareholders) would be required to file a U.S. federal income tax return for such year and pay tax on its income and gain that is effectively connected with such U.S. trade or business at U.S. corporate tax rates. In addition, the U.S. Tax Holding Company would be required to pay a branch profits tax equal to 30 per cent. of the dividend equivalent amount for the taxable year.
- k. The U.S. Tax Holding Company also will be subject to a 30 per cent. U.S. withholding tax on the gross amount of: (i) any U.S. source interest income that falls outside the portfolio interest exception or other available exception to withholding tax; (ii) any U.S. source dividend income or dividend equivalent payments; and (iii) any other U.S. source fixed or determinable annual or periodical gains, profits, or income, in each case to the extent such amounts are not effectively connected with a U.S. trade or business. All prospective Non-U.S. Investors are urged to consult their tax advisers regarding an investment in the Fund.
- l. As a result of the 2017 Tax Legislation, certain non-corporate U.S. Investors may be eligible for a deduction equal to a portion of the income allocated to them that is attributable to Investments in flow-through entities and certain investments in real estate investment trusts (“REITs”) or publicly traded partnerships. In general, a U.S. taxpayer other than a corporation is entitled to a deduction equal to 20 per cent. of the taxpayer’s “qualified business income,” subject to certain limitations. “Qualified business income” is the sum of the taxpayer’s income from qualified trades or businesses, REIT ordinary dividends and qualified publicly traded partnership income, but generally excludes capital gains (including REIT capital gain dividends) and other dividend income as well as any income that would not be treated as effectively connected income if such income were attributable to a nonresident alien or foreign corporation. Although many types of business are qualified trades or businesses, various types of service-related businesses are ineligible (including, for example, services in the fields of health, consulting, financial services and investment management). With respect to each taxable year, the 20 per cent. deduction is subject to a cap based on a U.S. Investor’s allocable share of the wages paid and/or capital invested with respect to the applicable qualified trade or business, although this cap does not apply with respect to REIT ordinary dividends and qualified publicly traded partnership income. Because of the foregoing limitations and the complexity associated with determining the amount of qualified business income and the applicable deduction limitations allocable to any U.S. Investor, there can be no assurances that any of a U.S. Investor’s income attributable to the Fund will be qualified business income or that (if a portion of such income does constitute qualified business income) the Fund will be able to provide individual U.S. Investors with information sufficient to calculate their deductions with respect to such income.

## **17.7 Tax Returns, Audits, and Partnership Representative**

- a. The Bipartisan Budget Act of 2015, which was enacted on November 2, 2015, significantly changed the rules for U.S. federal income tax audits of partnerships. Under the rules, tax audits will continue to be conducted at the partnership level. However, with respect to tax returns for taxable years beginning after 31 December 2017, adjustments to the amount of tax due (including interest and penalties) generally will be payable by the partnership unless the partnership qualifies for and affirmatively elects an alternative procedure. Under the

alternative procedure, if elected, a partnership would issue information returns to persons who were partners in the audited year, who would then be required to take the adjustments into account in calculating their own tax liability, and the partnership would not be liable for the adjustments. If the Fund is able to and, in fact, elects the alternative procedure for a given adjustment, the amount of taxes for which such persons will be liable will be increased by any applicable penalties and a special interest charge.

- b. There can be no assurance that the Fund will be eligible to make such an election or that it will, in fact, make such an election for any given adjustment. If the Fund does not or is not able to make such an election, then: (i) the then current Investors in the Fund in the aggregate, could indirectly bear income tax liabilities in excess of the aggregate amount of taxes that would have been due had the Fund elected the alternative procedure; and (ii) a given Investor may indirectly bear taxes attributable to income allocable to other Investors or former Investors, including taxes (as well as interest and penalties) with respect to periods prior to such Investor's ownership of interests in the Fund. Accordingly, it is possible that a Investor will bear tax liabilities unrelated to its interest in the Fund. Amounts available for distribution to Investors may be reduced as a result of the Fund's obligations to pay any taxes associated with an adjustment.
- c. The partnership representative of the Fund will be the only person with the authority to act on behalf of the Fund with respect to audits and certain other tax matters and may decide not to elect (or may be unable to elect) the alternative procedure for any particular adjustment. In addition, the Fund and each Investor will be bound by the actions taken by the partnership representative on behalf of the Fund during any audit or litigation proceeding concerning U.S. federal income taxes.
- d. Many issues and the overall effect of this new legislation on the Fund are uncertain, and potential Investors are urged to consult their tax advisers regarding all aspects of this legislation as it affects their particular circumstances.

## **17.8 Certain Reporting Requirements**

- a. A prospective Investor who purchases Securities may be required to file Form 8865 (or similar form) with the IRS if the purchase, when aggregated with all transfers of cash or other property made by that Investor (or any related person) within the preceding 12 month period, exceeds \$100,000 (or its equivalent). A Investor who fails to file any such required form could be required to pay a penalty equal to 10 per cent. of the gross amount paid for the Securities (subject to a maximum penalty of \$100,000, except in cases of intentional disregard). Prospective Investors should consult their tax advisers with respect to this or any other reporting requirement that may apply to an acquisition of the Securities.
- b. In addition, investors engaging in certain "reportable transactions", including certain loss transactions above a certain dollar threshold, may be required to disclose to the IRS information relating to such transaction, and to retain certain documents and other records related thereto. It is possible that the Fund may engage in transactions that subject the Fund and potentially Investors to such disclosure. An investor disposing of Securities at a taxable loss may also be subject to such disclosure. The foregoing discussion is only a brief summary of certain information reporting requirements. Substantial penalties may apply if the required reports are not made on time. Prospective Investors should consult their tax advisers regarding such reporting requirements.
- c. U.S. taxpayers that own certain "specified foreign financial assets", including equity of foreign entities, if the aggregate value of all of these assets exceeds \$50,000 at the end of the taxable year or \$75,000 at any time during the taxable year, may be required to file an

information report with respect to such assets with their tax returns. The interests in the Fund are expected to constitute specified foreign financial assets subject to these requirements unless the interests in the Fund are held in an account at a financial institution (in which case the account may be reportable if maintained by a non-U.S. financial institution). U.S. Investors should consult their tax advisers regarding the application of the rules relating to specified foreign financial asset reporting.

### **17.9 U.S. State and Local Taxes**

- a. State and local tax laws often differ significantly from U.S. federal income tax laws. In addition to U.S. federal income tax consequences, prospective Investors should consider potential U.S. state and local tax payment and filing obligations resulting from an investment in the Fund in the states or localities in which they are a resident for tax purposes or in which investments are made, if any.
- b. An investment in the Fund involves complex tax considerations. Prospective Investors are urged to consult their tax advisers with respect to the U.S. federal, state and local income tax considerations relevant to an investment in the Funds.

### **17.10 Depreciation Recapture**

Certain assets held directly or indirectly by the Fund may give rise to depreciation, depletion and cost recovery deductions. All or a portion of any gain realized by the Fund and its Investors upon a disposition of such assets may be subject to recapture rules and therefore recharacterized as ordinary income, rather than capital gain.

### **17.11 Organisation and Syndication Expenses**

A given Investor will not be allowed to deduct currently such Investor's share of any organisational expenses of the Fund. Any such expenses must be capitalised or amortised. In addition, a given Investor will not be allowed to deduct currently or amortise such Investor's share of any expenses incurred in connection with the offering of interests in the Fund. Any such expenses must be capitalised.

## **18 LIABILITY FOR TAXATION**

Each Investor severally undertakes to pay (and consents to such payment by the withholding of distributions which would otherwise be due to it) to the Fund or the General Partner or any Intermediate Vehicle, as the case may be, any amount which the Fund or the General Partner or the Intermediate Vehicle is required to pay by law in respect of taxes imposed upon the Fund or the General Partner or the Intermediate Vehicle in respect of income or profits allocated, or distributions made, to such Investor (as determined by the General Partner), due in particular (but not limited) to a failure by the Investor to provide information or to the Investor's personal tax situation which has caused a tax liability, whether before or after any sale or Transfer of such Investor's Securities in the Fund. The General Partner shall be entitled to withhold or cause to be withheld from each Investor's distributions from the Fund such amounts on account of taxes or similar charges, if any, as are required by applicable law.

## **19 ANNOUNCEMENTS AND CONFIDENTIALITY**

All public disclosure or announcement of the existence or the subject matter of this Memorandum will be subject to the approval of the General Partner. This will not affect any announcement or disclosure by an Investor under Section 19b of this Memorandum but the Investor required to make an announcement or disclosure will consult with the General Partner insofar as is reasonably



practicable before complying with such an obligation.

Each Investor will procure that its directors, managers, employees, officers, partners, Investors, agents, consultants and advisers and any affiliate (and their directors, employees, officers, partners, Investors, agents, consultants and advisers) keep confidential and will not disclose any information provided to it by or on behalf of the Fund or otherwise obtained by or in connection with this Memorandum and the Articles or which may come to its knowledge concerning the affairs of the Fund or any Investment made or proposed by the Fund, save to the extent that:

- a. disclosure is required by any applicable law or any court of law or any relevant regulator or tax authority;
- b. disclosure is necessary in order for an Investor to enforce its rights under the terms of this Memorandum;
- c. the information concerned is already in the public domain prior to disclosure (other than as a result of a breach of any obligation by any Investor);
- d. disclosure is made to an Investor's bona fide legal, tax or accountancy advisers or auditors, provided that such disclosure is made on a confidential basis and such advisers or auditors undertake an equivalent duty of confidentiality to that set out in this Section; or
- e. disclosure is required in good faith and only where reasonably necessary to any Affiliate of that Investor, provided that such disclosure is made on a confidential basis and such Affiliate undertakes an equivalent duty of confidentiality to that set out in this Section; or
- f. disclosure is made to the Liquidation Agent (including any prospective Liquidation Agent) or any New General Partner (including any prospective replacement General Partner) for the purpose of allowing the Liquidation Agent or New General Partner to make a reasonable assessment of the Fund and to advise accordingly.

## **20 FAIR TREATMENT OF SHAREHOLDERS – SIDE LETTERS**

- a. The participation of each Shareholder in the Fund is represented by Shares. Each Share pertaining to same Class of Shares have the same rights and obligations as each other. Therefore, equal treatment of all shareholders holding Shares of the same Class of Shares is ensured.
- b. The Fund may at its discretion enter into side letters and side arrangements in relation to the operation or business of the Fund with any Investor that have the effect of supplementing the terms of this Memorandum, provided that:
  - (i) no side letter or similar arrangements will contain terms that breach the terms of this Memorandum; and
  - (ii) no side letter will be entered into by the AIFM, the Investment Manager or the Fund with a specific view to granting a preferential treatment to Investor(s) which would result in an overall material disadvantage to other Investors. Notwithstanding the preceding sentence, the AIFM, the Investment Manager or the Fund may nevertheless grant preferential treatment to Investor(s) (such as but not limited to fee rebates, excuse rights, etc.) in their reasonable discretion and in the overall interest of the Fund.

## 21 INDEMNIFICATION AND LIABILITY

- a. The Indemnified Persons shall be entitled to be indemnified by the Fund out of its assets (and the General Partner shall therefore be entitled to grant indemnities on behalf of the Fund and to make payments out of its assets, to any Indemnified Person) against any and all claims, liabilities, costs or expenses (including reasonable legal fees) (“**Liabilities**”) incurred or threatened by reason of their being or having been the General Partner, the AIFM, the Investment Manager or an Affiliate (excluding Schroders), officer, director, partner, member, shareholder, agent, delegate or employee thereof (in each case in respect of such person’s activities in connection with the Fund) or director or shadow director or member of the advisory committee or equivalent body of any Intermediate Vehicle or Parallel Vehicle, or member of the Advisory Committee, provided that (i) no Indemnified Person (excluding members of the Advisory Committee and the Investors whom such members of the Advisory Committee represent) shall be so indemnified in relation to any Liability resulting as a result of Cause (excluding for the purpose of this section in the definition of Cause any Change of Control Event or the entry into insolvency of the General Partner, the AIFM or the Investment Manager), or to the extent that any such indemnification would be contrary to any applicable law or binding regulation and (ii) no members of the Advisory Committee shall be so indemnified with respect to any matter determined in a final judgment of a competent court to have resulted from its or his fraud or wilful misconduct in relation to the Fund, or to the extent that any such indemnification would be contrary to any applicable law or binding regulation. For the avoidance of doubt, members of the Advisory Committee shall have no fiduciary duty to the Fund and can act in their own best interest rather than in the best interest of the Fund and its Investors.
- b. No Indemnified Person shall be liable to any Investor or to the Fund for any Liabilities that may occur in connection with its activities on behalf of or in relation to the Fund or any Intermediate Vehicle except to the extent that such Liabilities resulted from Cause (excluding for the purpose of this section in the definition of Cause any Change of Control Event or the entry into insolvency of the General Partner, the AIFM or the Investment Manager).
- c. No Indemnified Person shall be liable to any Investor or to the Fund for any Liabilities that may occur in connection with its activities on behalf of or in relation to the Fund or any Intermediate Vehicle for the acts or omissions of any agent or other person acting for the Fund or for the Indemnified Person provided that such agent or other person was selected, instructed, engaged, retained and (where reasonably practicable) supervised by the Indemnified Person applying reasonable care.
- d. The indemnity provided in this section shall not apply to disputes among or between the General Partner, the AIFM, the Investment Manager, their Affiliates (excluding Schroders) and any of their respective officers, directors, partners, members, shareholders, agents, delegates and employees.
- e. Any Indemnified Person seeking indemnification in accordance with this section shall first seek to be indemnified to the fullest extent possible against any Liabilities by any insurance company from which indemnification can be sought and the amount to be indemnified by the Fund shall be reduced by any amount received by such insurance company (or the Fund shall be reimbursed of the amount received from any insurance company to the extent it has advanced such indemnification).
- f. Any expenses paid in advance should be subject to a legally binding agreement to return such amounts should the Indemnified Person subsequently lose its claim. Any Indemnified Person shall reimburse any indemnification received from the Fund to the extent such

indemnification results from Cause (excluding for the purpose of this section in the definition of Cause any Change of Control Event or the entry into insolvency of the General Partner, the AIFM or the Investment Manager) or from the removal without Cause.

- g. The General Partner will provide written notice to the Shareholders of, and relevant details regarding, any Liabilities which are likely to give rise to the payment of indemnification pursuant to this section.

## **22 PAYMENTS**

Unless otherwise expressly agreed in writing, all payments to be made pursuant to terms set out in this Memorandum will be made in USD to the party in immediately available funds to the accounts which will be communicated in writing by each of the Investors to the Fund or by the Fund to the Investors.

## **23 CONFLICTS OF INTEREST**

### **23.1 General**

The AIFM has implemented a conflict-of-interest policy, pursuant to which relevant conflicts of interest are identified, managed and disclosed to the Fund (the “**Conflicts of Interest Policy**”). Any conflict of interest is to be fully disclosed to the AIFM. The Fund will enter into all transactions on an arm's length basis.

### **23.2 Related Parties' activities**

- a. Notwithstanding anything to the contrary herein or in the Conflicts of Interest Policy, the General Partner, the AIFM, the Investment Manager, distributor(s), the Depositary and each of their subsidiaries, affiliates, partners, agents, directors, officers, employees, subcontractors or agents (collectively, the “**Related Parties**” and individually, a “**Related Party**”) may:
  - i. enter into a contract or commitment regarding a financial, banking or other transaction amongst themselves or with the Fund, including, but not limited to, the Fund's investment in the securities of another company or another organisation of which a particular investment portion belongs to the assets of the Fund, or have an interest in such contracts or such transactions;
  - ii. invest in shares, securities, assets or any property of a nature included in the Fund's property and trade them on their own behalf or on behalf of a third party;
  - iii. act as broker, agent or lender or provide other services in connection with the execution of transactions on the Fund's behalf;
  - iv. act as counterparty to derivative transactions or contracts entered into on the Fund's behalf or act as index sponsor or calculation agent of the indices to which the Fund is exposed by derivative transactions; and
  - v. act as agent or principal in the sale, issue or purchase of securities and other investments in or of the Fund through or with the AIFM, the Investment Manager or Depositary or one of their branches or subsidiaries, one of their associates, agents, subcontractors or representatives;
  - vi. have a potential conflict of interest with the Fund in the course of carrying out their

business or professional activities. The General Partner, the AIFM, the Investment Manager, distributor(s), the Depository and their subcontractors will take into consideration their respective duties to the Fund and all other persons when engaging in transactions that could potentially give rise to a conflict of interest. Should such conflicts arise, each of those persons would agree or be required by the Fund to attempt to make every effort to resolve any conflict of interest fairly (taking into consideration their respective obligations and duties) and to ensure that the Fund and its Shareholders are treated fairly;

- vii. earn commissions and other fees or profits from those activities. The activities and transactions above must be carried out under normal, independently negotiated sales terms.
- b. All of the Fund's cash assets may be invested in certificates of deposit or banking investments by any Related Party. Banking or similar transactions may also be undertaken with a Related Party or by its intermediary (provided the Related Party is authorised to carry out such activities).
- c. Subject to the Conflicts of Interest Policy (any proposed deviations from which shall be subject to approval of the Advisory Committee by majority vote), the AIFM and the Investment Manager and/or their Affiliates may give advice or take action with respect to any of their other clients which may differ from the advice given or the timing or nature of any action taken with respect to investments the Fund. The AIFM and its Affiliates have no obligation to recommend any investment opportunities to the Fund which they may recommend to other clients.
- d. The AIFM and the Investment Manager will devote as much of their time to the activities of the Fund as is necessary and sufficient to meet the performance objectives of the Fund. The AIFM and its Affiliates are not restricted from forming additional investment funds, from entering into other investment advisory/management relationships, or from engaging in other business activities provided however that no such activities would be reasonably foreseen as resulting in prejudice to the interests and/or strategies of the Fund prior to full investment thereof.
- e. All individual transactions, or an aggregate series of proximate, related, transactions which shall exceed in value more than five million United States Dollars (USD 5,000,000) between Related Parties shall be defined as “**Material Related Party Transactions**” and subject to the oversight and consultative functions of the Advisory Committee which in accordance with its obligations as defined in Section 5.7 must, in all instances of a Material Related Party Transaction, provide its prior written consent to the General Partner.

### **23.3 Allocation of Investment Opportunities**

The Fund will allocate investment opportunities at all times in accordance with principles of fairness and the asset allocation policy of the Investment Manager, as amended from time to time, which policy shall proscribe the fair and equitable treatment of the Fund in respect of investment opportunities that may be, or have been, concurrently presented to other funds managed or advised by the Investment Manager or its Affiliates (excluding Schroders).

### **23.4 Successor Fund**

Save as provided below, without the approval by Shareholders 75% Consent, the General Partner will not and will procure that the Investment Manager and their Affiliates (excluding Schroders) will not act as general partner, investment manager, investment adviser or the primary source of

transactions for any Successor Fund, until the first to occur of the following:

- a. the dissolution of the Fund;
- b. the date at which at least 75% of the Aggregate Fund Commitments have been invested, committed or reserved for investment (as evidenced by a letter of intent or similar commitment executed by or on behalf of the Fund) or used or reserved for expenses; or
- c. the General Partner being removed as the general partner of the Fund without being replaced by an Affiliate (excluding Schroders) of the General Partner (or receiving a notice from the Shareholders in connection therewith).

## **24 EXPENSES**

### **24.1 General**

- a. The Fund will pay out of the assets of the Fund of all reasonable costs, charges and expenses attributable to the operations of the Fund (“**Operating Expenses**”), in the good faith judgement of the General Partner, a Parallel Vehicle or an Intermediate Vehicle (unless such costs, charges and expenses are born by the respective Parallel or Intermediate Vehicle) including, but not limited to:
  - i. all ordinary and extraordinary fees, costs, expenses and liabilities related to the operation, investment, refinancing of investments, restructuring of investments, business affairs (incl. remuneration and costs of external directors of Investments), dissolution and liquidation of the Fund, including those related to sourcing, identifying, structuring, managing, evaluating, conducting due diligence on, investing in, acquiring, holding, monitoring, enforcing and disposing of Investments or prospective Investments for the Fund (regardless of whether such prospective Investments are subsequently consummated or not), including, but not limited to, travel expenses, lodging and meals related thereto;
  - ii. the Management Fee, the Depositary Fee, the Administrative Agent Fee, and any other Service Provider fees;
  - iii. fees payable to the relevant regulatory authorities in relation to the Fund;
  - iv. fees and expenses involved in registering and maintaining the registration of the Fund with any governmental agencies in Luxembourg and in any other country;
  - v. reasonable fees, costs and expenses payable to the managers of the General Partner in relation to their activities with respect to the Fund (including reasonable out-of-pocket expenses, insurance coverage, and reasonable travelling costs in connection with board meetings of the General Partner as well as the remuneration of the managers of the General Partner);
  - vi. reasonable fees, costs and expenses payable to the members of the Advisory Committee for one representative’s reasonable travel and lodging expenses incurred in attending meetings of the Advisory Committee;
  - vii. all reasonable costs incurred with the organisation of meetings of the Partners;
  - viii. any costs and expenses relating to Investor relation activity, including the drafting, translating, printing and mailing of reports and information to Investors;

- ix. any expenses incurred in connection with legal proceedings involving the Fund, directly or indirectly, as approved by the General Partner (provided that, for the avoidance of doubt, the Fund will not bear the costs of lawyers or other counsels assisting any of the BlueOrchard Parties in any litigation or disputes against the Fund);
  - x. costs and expenses disbursed in connection with the day-to-day management of the Fund and the operations of the Fund's Investments, including fees and expenses in connection with Investments and disinvestments, including bank charges in connection with disbursement of an Investment in the Fund, online subscriptions and licenses (e.g. relating to sourcing of investments, value creation initiatives, administration, reporting, and valuation requirements) and fees paid to third party Service Provider (to the extent not paid for by another entity) (incl. FX risk advisory services);
  - xi. any costs and expenses relating to any regulatory, financial and tax reporting (including the preparation of any reports, financial statements, and tax returns for the Fund);
  - xii. any expenses incurred in connection with obtaining legal, tax, regulatory, compliance, valuation and accounting advice and the advice of other experts and consultants in relation to the Fund (incl. jurisdiction specific reviews of placement rules and investor suitability);
  - xiii. consultation with professional advisers in relation to the Fund, including the legal, tax, regulatory, compliance, valuation accounting and other advisory fees and expenses for the negotiation, structuring, financing and documentation in relation to the acquisition, ownership and realisation of any Investment (regardless of whether such Investments are subsequently consummated or not);
  - xiv. insurance premia incurred on behalf of the Fund (third party liability, political risks, transfer risks, commercial risks, terrorism and environmental insurance premiums) and D&O insurance premia (which insurance shall for avoidance of doubt cover the Advisory Committee members and activities on behalf of the Fund) or other insurance cover costs and expenses for the members of the board of the General Partner and the Advisory Committee, transfer taxes, title premiums, brokerage commissions and other closing costs and expenses payable or incurred in connection with the acquisition, ownership and realisation of any Investment;
  - xv. audit expenses;
  - xvi. bank charges and interest, including interest on and fees and expenses related to or arising from any borrowing or hedging activities of the Fund;
  - xvii. taxes and other governmental charges; and
  - xviii. costs of winding-up and liquidating the Fund;
- b. The fees of any placement agent appointed on behalf of the General Partner will be borne by the General Partner or its Affiliates (excluding Schroders).

## **24.2 Formation Costs**

The Fund shall bear or reimburse the General Partner and its Affiliates (excluding Schroders) for

their pro rata share of its preliminary expenses, including legal, taxation, accounting, the costs of drawing up and printing this Memorandum, side letters, notary public fees, the filing costs with administrative authorities and any other costs pertaining to the setting up and launching of the Fund up to an amount of USD 150,000 (“**Formation Costs**”). These expenses shall be fully borne by the Fund based on its asset or on any other reasonable basis given the nature of the charges as reasonably determined by the General Partner and shall be booked as one-off profits or losses. Costs in excess of USD 150,000 shall be borne by the BlueOrchard Parties.

The Advisory Committee shall receive a breakdown of the Formation Costs incurred on or around the first Advisory Committee meeting.

### **24.3 Others**

The General Partner, the AIFM and the Investment Manager will each be responsible for the following expenses (i) insurance costs incurred in relation to professional indemnity insurance (other than as set out in Section 21 all overheads or running costs of the General Partner, the AIFM and the Investment Manager, including remuneration and expenses paid to their employees, rent, and utilities.

## **25 RISK FACTORS**

### **25.1 General**

- a. An investment in the Fund involves certain risks relating to the structure and investment objectives which Investors should evaluate before making a decision to invest in the Fund. Investment in the Fund is only suitable for those persons who are able to bear the economic risk of the investment, understand the high degree of risk involved, believe that the investment is suitable based upon their investment objectives and financial needs, and have no need for liquidity of investment. There can be no assurance that the Fund's objectives will be achieved or that there will be any return of capital.
- b. Before making an investment decision, Prospective Investors should carefully consider all of the information set out in this Memorandum, as well as their own personal circumstances. The risk factors referred to therein, and in this Memorandum, alone or collectively, may reduce the return on the Securities and could result in the loss of all or a proportion of a Shareholder's Capital Contribution. The price of the Securities of the Fund can go down as well as up and their value is not guaranteed. Investors may not receive, at redemption or liquidation, the amount that they originally invested.
- c. The risks may include or relate to equity markets, foreign exchange rates, interest rates, credit risk, counterparty risk, market volatility, liquidity, concerns regarding sustainability of the Fund investments and/or potential reputational and conduct related risks, and political risks. The risk factors set out in this Memorandum are not exhaustive. There may be other risks that a prospective Investor should consider that are relevant to his/her/its own particular circumstances or generally.
- d. An investment in the Securities is only suitable for Investors who (either alone or in conjunction with an appropriate financial or other adviser) are capable of evaluating the merits and risks of such an investment and who have sufficient resources to be able to bear any losses that may result therefrom.
- e. Before making any investment decision with respect to the Securities, prospective Investors should consult their own stockbroker, bank manager, lawyer, solicitor, accountant and/or financial adviser and carefully review and consider such an investment decision in the light

of the foregoing and the prospective Investor's personal circumstances.

## **25.2 Unspecified Investments**

No assurance can be given that the Fund will be successful in obtaining suitable Investments or, if such Investments are made, that the objectives of the Fund will be achieved. Prospective Investors will be unable to evaluate the economic merit of any future Investment which may be acquired. Investors must rely entirely on the judgement of the AIFM and, as the case may be, the Investment Manager with respect to the selection and acquisition of Investments.

## **25.3 Conflicts of interest**

The General Partner, the AIFM and the Investment Manager are and will be engaged in other business activities in addition to managing and providing advice to the Fund. It is possible that companies with whom they are associated invest by way of co-investment or otherwise in the same issues, placements and investments as the Fund, and under the same or similar conditions. It is also possible that such associated companies may have already invested in these assets or may invest into such assets at a later stage. However, the General Partner, the AIFM and the Investment Manager will be obliged to act and to give advice in the best interest of the Fund and its Shareholders.

## **25.4 Diverse investor group**

The Shareholders may have conflicting investment, tax, and other interests with respect to their investments in the Fund. As a consequence, conflicts of interest may arise in connection with decisions made by the General Partner, the AIFM and the Investment Manager that may be more beneficial for one investor than for another investor. The Investment Manager will consider the investment and tax objectives of the Fund and the Shareholders as a group, not the investment, tax or other objectives of any Shareholder individually.

## **25.5 General economic and market conditions**

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

## **25.6 Foreign currencies and exchange rates**

To the extent that the Fund directly or indirectly holds assets in local currencies, the Fund will be exposed to a degree of currency risk which may adversely affect performance. Changes in foreign currency exchange rates will affect the value of securities in the Fund. In addition, the Fund will incur costs in connection with conversions between various currencies and in connection with partial or total hedging of its foreign currency exposures (assuming it chooses to engage in hedging).

## **25.7 Lack of access to foreign currency**

The Fund operates in emerging markets and with foreign currencies. Due to regulatory or political monetary policy decisions of the local governments in the jurisdictions where the Fund operates,



which may be put into force unforeseeably and upon short notice, financial institutions may no longer have the envisaged and required access to sufficient foreign funds to honour their obligations in the respective currency. This may lead to a technical default on an obligation, despite the financial institution being sufficiently solvent.

#### **25.8 Risks associated with transactions in forward foreign exchange transactions, futures & swaps contracts**

To the extent applicable, the Fund may seek to protect the returns from the underlying assets by using forward foreign exchange transactions in currency, futures and swap contracts. The ability to use these strategies may be limited by market conditions and regulatory limits and there can be no assurance that the objective sought to be attained from the use of these strategies will be achieved. Participation in futures markets and in swap contracts and in currency exchange transactions involves investment risks and transaction costs to which the Fund would not be subject if the Fund did not use these strategies. The movements in the direction of the foreign currency and interest rate markets may have adverse consequences to the Fund and may leave the Fund in a worse position than if such strategies were not used.

#### **25.9 Restrictions on Transfer and redemption**

- a. Securities are subject to restrictions on Transfer. Investors may not withdraw capital from the Fund other than to the extent of current income and disposition proceeds when and as required to be distributed by the Fund.
- b. In addition to the features described above, such restrictions may also be caused by specific requirements such as a minimum (subsequent) subscription amount or due to the fact that certain Securities may be closed to additional subscriptions after the Offering Period.
- c. Investors should be aware that nothing will oblige the Fund to meet any redemption request, except for Class E Investors, and prospective Investors should be aware that they may be required to bear the financial risk of their investment for a significant period of time and Investors may be paid out at different Net Asset Values per Shares.

#### **25.10 Liquidity risk**

- a. The Fund invests in illiquid underlying assets. An investment in the Fund carries a general liquidity risk. The Securities may also be affected by restrictions on redemption imposed by this Memorandum and under applicable law. The value of the Securities will, depending on their features, fluctuate based upon the performance of the Fund, other relevant factors and any third party's assessment thereof. Accordingly, if an Investor transfers or redeems its Securities, the sale or redemption price may be lower than the original investment amount. Securities may, however, be redeemable at the option of the Fund under certain circumstances.
- b. Governments, their regulatory agencies or self-regulatory organisations may take actions that affect the regulation of the Fund's investments, instruments or products in which the Fund invests, or the issuers of such instruments or structured products, in ways that are unforeseeable. Borrowers under loans held by the Fund seek protection under the bankruptcy laws. Legislation or regulation may also change the way in which the Fund itself is regulated. Such legislation or regulation could limit or preclude the Fund's ability to achieve its investment objective and investment strategy. The General Partner and the AIFM will monitor developments and seek to manage the Fund's portfolio in a manner consistent with achieving the Fund's investment objective and investment strategy, but there can be no assurance that they will be successful in doing so.

- c. Furthermore, the delay or denial of official authorization that may be required for the repatriation of capital, or other restrictions applicable to the Fund's investments, can adversely affect the value of the Fund's portfolio. The liquidity of investments in countries where such factors affect the portfolio may suffer as a result. The limited liquidity of certain markets must be taken into account when evaluating investments.

#### **25.11 Early termination**

In the event of the early termination of the Fund, the Fund would have to distribute to the Investors their pro-rata interest in the assets of the Fund. The Fund's Investments would have to be sold by the Fund or distributed to the Investors. It is possible that at the time of such sale or redemption certain Investments held by the Fund may be worth less than the initial cost of the Investment, resulting in a loss to the Fund and to its Investors. Moreover, in the event the Fund terminates prior to the complete amortisation of organisational expenses, any unamortised portion of such expenses will be accelerated and will be debited (and thereby reduce) amounts otherwise available for distribution to Investors.

#### **25.12 Temporary investments**

Monies paid to the Fund may be invested in liquid assets on a temporary basis pending investment in Investments. These temporary investments may produce lower returns for Investors in the Fund than returns earned by the Investments for the same period.

#### **25.13 Concentration and diversification**

Although the Fund is subject to the Investment Restrictions and this Memorandum describes the Fund's diversification goals, there may be a concentration in a particular issuer, industry or country. If the Fund elects to concentrate its Investments in a particular issuer, industry or country, the Fund will become more susceptible to fluctuations in value resulting from adverse economic conditions affecting that particular issuer, industry or country.

#### **25.14 Duplication of costs**

- a. It should be noted that the Fund incurs costs of its own management and fees paid to the Administrative Agent, the Depositary and the AIFM. In addition, the Fund incurs similar costs in its capacity as an investor in Target Funds which in turn pay certain fees to their own manager and other service providers. Further, some of the techniques employed at the level of the Target Funds may involve frequent changes in positions and a consequent portfolio turnover. This may result in brokerage commission expenses which exceed significantly those of other investment funds of comparable size. It is acknowledged that Target Funds, as defined, shall only be used for purposes of liquidity management, and that any request by the Investment Manager to make a Target Fund investment which is not for that express purpose shall be subject to pre-approval by the Advisory Committee.
- b. As a consequence, the costs of the Fund may represent a higher percentage of the Net Asset Value than would typically be the case with direct investment or in the case of investment funds which invest directly.

#### **25.15 Change of law**

The Fund must comply with regulatory constraints, such as a change in the laws affecting the investment restrictions and limits applicable to RAIFFs, which might require a change in the Investment Policy and objectives of the Fund.

## **25.16 Leverage**

- a. While the use of leverage may increase the return on the invested capital, it also creates greater potential for loss. There can be no assurance that the Fund, in incurring debt, will be able to meet its loan obligations.
- b. Leverage risk is the risk associated with the borrowing of funds and other investment techniques. Leverage is a speculative technique which may expose the Fund to greater risk and increase its costs. Increases and decreases in the value of the Fund's portfolio will be magnified when the Fund uses leverage. For example, leverage may cause greater swings in the Fund's Net Asset Value or cause the Fund to lose more than it invested. There can be no assurance that the Fund's leveraging strategy will be successful. If leverage is employed, the Net Asset Value, and market value or nominal value of the Securities will be more volatile, and the yield to the Investors will tend to fluctuate with changes in the shorter-term interest rates on the leverage. The Fund will pay (and the Investors will bear) any costs and expenses relating to any leverage. Any decline in the value of Investments will be borne entirely by the Investors depending on the Securities they own and their features. Therefore, if the market value of the Fund's portfolio declines, the leverage will result in a greater decrease in Net Asset Value to the Investors than if the Fund was not leveraged.

## **25.17 Market risk**

The market price of securities owned by the Fund may go up or down, sometimes rapidly or unpredictably. Securities may decline in value due to factors affecting securities markets generally or particular industries represented in the securities markets. The value of a security may decline due to general market conditions which are not specifically related to a particular Fund, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates or adverse investor sentiment generally. They may also decline due to factors which affect a particular industry or industries, such as labour shortages or increased production costs and competitive conditions within an industry. During a general downturn in the securities markets, multiple asset classes may decline in value simultaneously.

## **25.18 Issuer risk**

The value of a security may decline for a number of reasons which directly relate to the issuer, such as management performance, financial leverage and reduced demand for the issuer's goods or services.

## **25.19 Financial failure of intermediaries**

There is always the possibility that the institutions, including brokerage firms and banks, with which the Fund does business, or to which securities have been entrusted for custodial purposes, will encounter financial difficulties that may impair their operational capabilities or result in losses to the Fund.

## **25.20 Illiquidity of Investments; unregulated transactions**

- a. The Fund may invest in assets that are subject to legal or other restrictions on transfer or for which the liquidity of the market may be restricted. The market prices, if any, for such assets tend to be volatile and may not be readily ascertainable, and the Fund may not be able to sell them when it desires to do so or to realise what it perceives to be their fair value in the event of a sale. The sale of restricted and illiquid assets often requires more time and results in higher brokerage charges or dealer discounts and other selling expenses than does the sale of assets eligible for trading on national securities exchanges or in the over-the-counter

markets. The Fund may not be able to readily dispose of such investments with restricted liquidity and, in some cases, may be contractually prohibited from disposing of such investments for a specified period of time.

- b. Companies whose securities are not publicly traded are not subject to the same disclosure and reporting requirements that are generally applicable to companies with publicly traded securities, nor is the trading of such non-publicly traded securities regulated by any government agency. Accordingly, the protections accorded by such regulation will not be available in making such investments.

#### **25.21 Valuation risks**

- a. Prospective Investors should acknowledge that the portfolio of the Fund will be composed of assets of different natures in terms of inter alia geographies, financial statements formats, reference currencies, accounting principles, types and liquidity of securities, coherence and comprehensiveness of data.
- b. The valuation function is performed internally by the AIFM. As a result, the valuation of the portfolio and the production of the NAV calculation will be a complex process which might in certain circumstances require the AIFM to make certain assumptions in order to produce the desired output.
- c. The lack of an active public market for securities and debt instruments will make it more difficult and subjective to value investments of the Fund for the purposes of determining the NAV.

#### **25.22 Disclosure and accounting standards**

Emerging markets entities may not be subject to uniform accounting, auditing and financial reporting standards and auditing practices and requirements, or such standards, practices and requirements may not be comparable to those applicable to companies in developed countries. Standards of disclosure in certain developing countries where financial institutions are located are materially less stringent than those of the US or the EU.

#### **25.23 Emerging markets risks**

- a. The Fund may invest (directly or indirectly) in assets that are located in emerging markets in which case the following risk factors should be carefully reviewed by prospective Investors.
- b. In certain countries, there is the possibility of expropriation of assets, confiscatory taxation, political or social instability or diplomatic developments which could affect investment in those countries. There may be less publicly available information about certain financial instruments than some Investors would find customary and entities in some countries may not be subject to accounting, auditing and financial reporting standards and requirements comparable to those to which certain Investors may be accustomed. There are also varying levels of government supervision and regulation of exchanges, financial institutions and issuers in various countries. In addition, the manner in which foreign Investors may invest in securities in certain countries, as well as limitations on such investments, may affect the investment operations of the Fund.
- c. Settlement systems in emerging markets may be less well organised than in developed markets. Thus, there may be a risk that settlement may be delayed and that cash or securities of the Fund may be in jeopardy because of failures or of defects in the systems. In particular,

market practice may require that payment will be made prior to receipt of the security which is being purchased or that delivery of a security must be made before payment is received. In such cases, default by a broker or bank through whom the relevant transaction is effected might result in a loss being suffered by the Fund investing in emerging market securities.

- d. There may also be a danger that, because of uncertainties in the operation of settlement systems in individual markets, competing claims may arise in respect of securities held by or to be transferred to the Fund.
- e. External shocks: Although the microfinance industry has proved to be resilient to macroeconomic shocks or at least to be able to recuperate faster than other larger scale industries, such shocks could nevertheless affect general consumption patterns and thereby the micro businesses activity, especially if prolonged over long periods of time.
- f. Changes in the regulatory environment: Changes in the regulatory environment by central banks, legislators or other supervisory authorities could affect the ability of micro financial institutions to develop themselves to the fullest extent possible. Examples of such adverse regulatory environment could take the form of caps imposed on levels of interest rates chargeable to clients, or taxes imposed on income or financial transactions.
- g. Effect of social and environmental investment goals: The Fund's objective is to carry out sustainable investments according to a developmental, environmental, and social agenda with a core guiding principle of doing no harm to those institutions and communities served by the Fund's investments. More information regarding the Fund's approach to impact, sustainability and ESG factors can be found in the SFDR Annex hereof. The Fund's goal to address important developmental, environmental, social, and ethical issues may prevent the Fund from realising a maximum return on the investments that are made. Both the Fund's social and financial objectives will be considered when making investment and divestiture decisions, however it is not guaranteed that the Fund's sustainable investments will create the desired impact.

#### **25.24 Risk related to financial institutions**

Certain financial institutions may be adversely affected by market events and could be forced into restructurings, mergers with other financial institutions, nationalised (whether in part or in full), be subject to government intervention or become bankrupt or insolvent. All of these events may have an adverse effect on the Fund and may result in the disruption or complete cancellation of payments to the Fund. Such events may also trigger a crisis in global credit markets and may have a significant effect on the Fund and its assets. Prospective investors should note that the Fund's investments may include bonds and other debt securities that constitute subordinated obligations of such institutions. Upon the occurrence of any of the events outlined above the claims of any holder of such subordinated securities will rank behind in priority to the claims of senior creditors of such institution. No payments will be made to the Fund in respect of any holdings of such subordinated bonds or debt securities until the claims of the senior creditors have been satisfied or provided for in full.

#### **25.25 Use of financial derivative instruments**

The Fund may use financial derivative instruments in accordance with the Investment Restrictions set out under Section 4.2 of this Memorandum and in compliance with their investment policies and objective. While the prudent use of financial derivative instruments can be beneficial, derivatives also involve risks different from, and, in certain cases, greater than, the risks presented by more traditional investments. The following is a general discussion of important risk factors and issues concerning the use of derivatives that Investors should understand before investing in the

Fund.

#### *25.25.1 Control and monitoring*

Derivative products are highly specialised instruments that require investment techniques and risk analysis different from those associated with equity and fixed income securities. The use of derivative techniques requires an understanding not only of the underlying assets of the derivative but also of the derivative itself, without the benefit of observing the performance of the derivative under all possible market conditions. In particular, the use and complexity of derivatives require the maintenance of adequate controls to monitor the transactions entered into, the ability to assess the risk that a derivative adds to the Fund and the ability to forecast the relative price, interest rate or currency rate movements correctly.

#### *25.25.2 Counterparty risk*

The Fund invests may enter into transactions in OTC markets, which will expose the Fund or Target Fund in which the Fund invests to the credit of its counterparties and their ability to satisfy the terms of such contracts. There is also a possibility that the relevant transactions and derivative techniques are terminated due, for instance, to bankruptcy, supervening illegality or change in the tax or accounting laws relative to those at the time the agreement was originated.

#### *25.25.3 Other risks*

Other risks in using derivatives include the risk of differing valuations of derivatives arising out of different permitted valuation methods and the inability of derivatives to correlate perfectly with underlying securities, rates and indices. Many derivatives, in particular OTC Derivatives, are complex and often valued subjectively and the valuation can only be provided by a limited number of market professionals which often are acting as counterparties to the transaction to be valued. Inaccurate valuations can result in increased cash payment requirements to counterparties or a loss of value to the Fund or Target Fund.

Derivatives do not always perfectly or even highly correlate or track the value of the securities, rates or indices they are designed to track. Consequently, the Fund's use of derivative techniques may not always be an effective means of, and sometimes could be counterproductive to, following the Fund's investment objective.

### **25.26 Natural disasters and pandemics**

Some of the countries in which the financial institutions and the final beneficiaries may be located are relatively less equipped than more developed countries to deal with natural disasters such as floods, tsunamis, hurricanes and earthquakes and pandemics such as, for example, COVID-19. Such countries may not efficiently and quickly recover from such event, which could have a materially adverse effect on financial institutions and the final beneficiaries.

### **25.27 Environmental Risks**

The Fund could be exposed to substantial risk of loss arising from Investments involving undisclosed or unknown underlying environmental, health or occupational safety matters. An Investment made by the Fund could be subject to a wide range of environmental, health and safety laws, ordinances, and regulations, including those relating to the investigation, removal, and remediation of past or present releases of hazardous or toxic substances. Furthermore, changes in environmental laws or regulations or the environmental condition of an Investment could create liabilities that did not exist at the time of the Investment and that could not have been foreseen. For more information on environmental risks related to the Fund's Investments see "Climate Change"

below. The Fund will employ BlueOrchard's, proprietary ESG and impact management framework, called "B.Impact" to identify such risks and agree on action plans with the Investments to avoid and handle such risks. However, these risks cannot be avoided fully.

## **25.28 Climate Change**

The Fund may make Investments located in areas which are subject to climate change and, as such, there could be significant physical effects of climate change that have the potential to have a material effect on such Investments. Physical impacts of climate change could include: increased storm intensity and severity of weather (e.g., floods or hurricanes); wildfires; sea level rise; and extreme temperatures. For example, many climate models indicate that global warming is likely to result in rising sea levels and increased frequency and severity of weather events, which could lead to higher insurance costs, or a decrease in available coverage, for investments in areas subject to severe weather. These climate-related changes could damage a property's physical infrastructure, especially operations located in low-lying areas near coasts and riverbanks, and facilities situated in hurricane-prone and rain-susceptible regions.

As a result of these physical impacts from climate-related events, the Fund could be vulnerable to the following: risks of damage to the underlying Investments financed by the Fund; indirect financial and operational impacts from disruptions to the operations of the underlying Investments financed by the Fund due to severe weather or other unforeseen climate-related events; increased insurance premiums and deductibles or a decrease in the availability of coverage for investments in areas subject to severe weather; increased insurance claims and liabilities; increase in energy cost impacting operational returns; decreased consumer demand for products or services resulting from physical changes associated with climate change; incorrect long-term valuation of an investment due to changing conditions not previously anticipated at the time of the investment; and economic disturbances arising from the foregoing.

## **25.29 ESG and Sustainability Risks**

The AIFM has adopted a responsible investment policy on the integration of sustainability risks in its investment decision-making process.

The likely impacts of sustainability risks on the returns of the Fund will depend on the Fund's exposure to Investments that are vulnerable to sustainability risks and the materiality of the sustainability risks. The negative impacts of sustainability risks on the Fund could be mitigated by the AIFM's approach to integrating sustainability risks in its investment decision-making. However, there is no guarantee that these measures will mitigate or prevent sustainability risks from materializing in respect of the Fund.

The likely impact on the returns of the Fund from an actual or potential material decline in the value of an investment due to an environmental, social, and governance ("ESG") event or condition will vary and depend on several factors including, but not limited to, the type, extent, complexity and duration of the event or condition, prevailing market conditions and the existence of any mitigating factors.

The ESG information used to determine whether companies are managed and behave responsibly could be provided by third-party sources and is based on backward-looking analysis. The subjective nature of non-financial ESG criteria means a wide variety of outcomes are possible. The data might not adequately address material sustainability factors. The analysis is also dependent on companies disclosing relevant data and the availability of this data can be limited.

The Fund will employ BlueOrchard's, proprietary ESG and impact management framework, called "B.Impact" to identify such risks and agree on action plans with the Investments to avoid and handle such risks. However, these risks cannot be avoided fully.

### **25.30 Accounting Practices**

The accounting standards in emerging market economies may not correspond to international accounting standards or generally accepted accounting practices in all material respects. In addition, auditing requirements and standards may differ from those generally accepted in international capital markets and, consequently, information available to investors in developed capital markets may not always be obtainable in respect of financial institutions in emerging market economies.

### **25.31 Reliance on management**

The Fund depends significantly on the efforts and abilities of the members of the General Partner, the AIFM and the Investment Manager. The loss of these persons' services or loss of key persons could have a materially adverse effect on the Fund.

### **25.32 No segregation of assets and liabilities between Classes and tranches**

Investors should note that there is no segregation of assets and liabilities between Classes and tranches of Shares. Therefore, to the extent that a liability which is allocated pursuant to the provisions of this Memorandum or the Articles to one or more Classes or tranches cannot be met by the Fund out of the assets allocated to that or these relevant Classes or tranches, Investors should note that other Classes or tranches may bear the excess of such liability. In particular, but without limitation, Investors should note that although as between the Investors and for all purposes under this Memorandum and the Articles, any costs, expenses, interest and liabilities associated with an Investment are expected not to be allocated to the relevant Class created further to the relevant Excused Investor's excuse with respect to such Investment, if, for whatever reasons, those costs, expenses, interest and liabilities cannot be met (in full) out of the assets allocated to the other Classes (or tranches) in accordance with the terms of this Memorandum and the Articles, such Class (and the relevant Excused Investor(s)) may have to bear the excess of such costs, expenses, interest and liabilities out of the assets allocated to them.

### **25.33 Criminality and Fraud**

Crime, corruption and fraud as well as ties between government, agencies or officials and the private sector in certain target countries have resulted – and could in the future result in preferential treatment, inefficient resource allocation, arbitrary decisions and other practices or policies that could have a material and adverse effect on the Fund's Investments. Furthermore, diverse criminal groups may succeed in extorting protection money from financial institutions or their partners. A portfolio company's management or staff may be bribed or otherwise pressured into defrauding their company.

### **25.34 Pandemic Risk**

In late 2019 and early 2020, a novel coronavirus (SARS-CoV-2) and related respiratory disease ("COVID-19") emerged in China and spread rapidly across the world, including to Europe. This outbreak has led and for an unknown period of time will continue to lead to disruptions in local, regional, national and global markets and economies affected thereby. With respect to the European and emerging markets this outbreak has resulted in, and until fully resolved may continue to result in, the following among other things:



- (i) government imposition of various forms of "stay at home" orders and the closing of "non-essential" businesses, resulting in significant disruption to several businesses of many markets, as well as in lay-offs of employees, and, while these effects are hoped to be temporary, some effects could be persistent or even permanent; and
- (ii) rapidly evolving proposals and/or actions by governments to address problems being experienced by the markets and by businesses and the economy in general which will not necessarily adequately address the problems facing the market. This outbreak is having, and any future outbreaks could have, an adverse impact on the Investments and the Fund and on the markets and the economy in general, and that impact could be material. It is impossible to determine the scope of this outbreak, or any future outbreaks, how long any such outbreak, market disruption or uncertainties may last, the effect any governmental actions will have or the full potential impact on the Fund and its Investments.

Further, from an operational perspective, the Investment Manager's investment professionals may at various times during the Investment Period be working remotely. An extended period of remote work arrangements could strain the Fund's business continuity plans, introduce operational risk, including but not limited to cybersecurity risks, and impair the Fund's ability to manage its business. As a result, the Fund relies upon the successful implementation and execution of the business continuity planning of such providers in the current environment. If one or more of these third parties to whom the Fund outsources certain critical business activities experience operational failures as a result of the impacts from the spread of COVID-19 or claim that they cannot perform due to a force majeure, it may have a material adverse effect on the Fund's business, financial condition, results of operations, liquidity and cash flows.

While several countries, have relaxed public health restrictions with a view to partially or fully reopening their economies, recurring COVID-19 outbreaks and mutations of the virus have led to the re-introduction of such restrictions in a number of European states and globally and could continue to lead to the re-introduction of such restrictions elsewhere. These continued travel restrictions may prolong the global economic downturn. The absence or delay of viable treatment options or a widely available vaccine could lead people to continue to self-isolate and not participate in the economy at pre-pandemic levels for a prolonged period of time. Even after the COVID-19 pandemic subsides, the European economy and most other global economies may experience a recession, and the Fund could be materially adversely affected by a prolonged recession in Europe and other relevant markets.

Other disease may trigger similar outbreaks in the future and may lead to similar disruptions in local, regional, national, and global markets and economies affected thereby for an unknown period of time.

#### **25.35 Tax risks in general**

- a. An investment in the Fund involves complex tax considerations in Luxembourg, in the countries in which Investment assets are located, in countries in which particular Investors are located, and possibly in other countries (including the countries in which the Investment Manager or its affiliates are located, as the case may be). Some of these tax considerations will differ for particular Investors. Among other things, Investors may be subject to tax on Fund income even if the Fund does not make distributions.
- b. Depending on individual circumstances, the taxation treatment for direct or indirect Investors may differ from the guidance of Section 17 of this Memorandum and Investors

should obtain advice from their own tax advisers regarding the tax implications for them of holding and disposing of Securities and receiving distributions in respect of the Securities.

- c. BEFORE DETERMINING TO INVEST IN THE FUND, PROSPECTIVE INVESTORS SHOULD EVALUATE WHETHER THEY ACCEPT THE AFORESAID RISKS WHICH THEY WILL ASSUME BY BUYING SECURITIES OF THE FUND. THE FOREGOING LIST OF RISK FACTORS DOES NOT PURPORT TO BE A COMPLETE EXPLANATION OF THE RISKS INVOLVED IN THIS OFFERING.
- d. PROSPECTIVE INVESTORS SHOULD READ THE ENTIRE MEMORANDUM AND FULLY EVALUATE ALL OTHER INFORMATION THAT THEY DEEM TO BE NECESSARY BEFORE DETERMINING TO INVEST IN THE FUND.

### **25.36 Gross and Commitment Methods**

The gross method is the method used under the 2013 Act to calculate the leverage used by the Sub-funds which takes into account the value of all positions, converts derivative instruments into an equivalent position in the underlying asset of that derivative, calculates exposures created through the reinvestment of borrowings if these increase exposure and include other arrangements generating leverage, but disregards netting and hedging arrangements and excludes cash and cash equivalents held in the base currency of the Sub-fund (the “**Gross Method**”).

The commitment method is the method used under the 2013 Act to calculate the leverage used by the Sub-fund which takes into account exposures of all positions, converts derivative instruments into an equivalent position in the underlying asset of that derivative, applies netting and hedging arrangements, calculates exposures created through the reinvestment of borrowings if these increase exposure and include other arrangements generating leverage (the “**Commitment Method**”).

The Gross Method gives the overall exposure of the Sub-funds whereas the Commitment Method gives insight in the hedging and netting techniques used by the Investment Manager. Shareholders should note that leverage per se is not an accurate risk indicator. A higher degree of leverage does not necessarily imply a higher degree of risk (whether market, credit or liquidity risks).

### **25.37 US Regulatory Risks**

- a. Adverse Treatment of Certain Investors: the operation of the Fund and the tax consequences of an investment in the Fund are substantially affected by legal and regulatory requirements, including those imposed by ERISA, the Code and regulations promulgated under each statute and by other applicable law, including the tax laws of any jurisdiction in which the Fund or any of its affiliates is or may be organised, formed or incorporated. To ensure compliance with laws and regulations that affect a certain group of Investors, the relevant AIFM or Investment Manager may, acting reasonably and in good faith, take actions or omit to take actions that could have an adverse effect on other Investors to whom such laws and/or regulations do not apply.
- b. Certain U.S. Regulatory Considerations: the Fund is not registered under the Investment Company Act of 1940 and does not comply with the rules applicable to funds so registered and accordingly, the provisions of the Investment Company Act will not be afforded to the Fund or the Investors. Neither the AIFM nor the Investment Manager is required to be registered under the US Investment Advisers Act of 1940 and potential investors or Investors should not expect the substantive protections of the US Investment Advisers act of 1940 to apply.

Neither the AIFM nor the Investment Manager will register with the CFTC as a commodity trading adviser. Investors should therefore not expect the protections that such registrations would afford them.

## 25.38 ERISA Considerations

- a. The U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) and the Code impose certain requirements on employee benefit plans to which ERISA applies, certain other plans and accounts (such as Keogh plans and individual retirement accounts) that, although not subject to ERISA, are subject to certain similar rules under Section 4975 of the Code, and entities that are deemed to hold the assets of these employee benefit plans, other plans or accounts under the Plan Assets Regulation (as defined below) (collectively, “**Benefit Plan Investors**”). ERISA and the Code also impose certain requirements on those persons who are fiduciaries with respect to Benefit Plan Investors (“**Plan Fiduciaries**”).
- b. In accordance with ERISA’s general fiduciary standards, before investing in the Fund, a Plan Fiduciary should determine whether such an investment is permitted under the instruments governing the Benefit Plan Investor and is appropriate for the Benefit Plan Investor in view of its overall investment policy and the composition and diversification of its portfolio. Thus, a Plan Fiduciary considering an investment in the Fund should consult with its legal counsel concerning all the legal implications of investing in the Fund, especially the issues discussed in the following paragraphs.
- c. Unless statutory or administrative exemptions are available, Section 406 of ERISA and Section 4975 of the Code prohibit a broad range of transactions involving “plan assets” and persons who have certain specified relationships to a Benefit Plan Investor (“parties in interest” within the meaning of ERISA and “disqualified persons” within the meaning of the Code) and impose additional prohibitions on parties in interest and disqualified persons who are Plan Fiduciaries. Certain prospective Benefit Plan Investors may currently maintain relationships with the Investment Manager and/or other entities that are affiliated with the Fund, and, as a result, one or more of such entities may be deemed to be a “party in interest” or “disqualified person” with respect to any such prospective Benefit Plan Investor.
- d. Thus, a Plan Fiduciary should consider whether an investment in the Fund might constitute or result in a non-exempt “prohibited transaction” under Section 406 of ERISA or Section 4975 of the Code. The availability of a prohibited transaction exemption issued by the U.S. Department of Labor to a transaction involving the Fund does not necessarily mean that all related requirements of ERISA or the Code are met with respect to the Fund and its operations or the AIFM or the Investment Manager and its functions.
- e. In addition, before investing in the Fund, Plan Fiduciaries should consider the implications of a regulation issued by the U.S. Department of Labor (29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA, the “**Plan Assets Regulation**”) that addresses the circumstances under which a direct or indirect investment by a Benefit Plan Investor in an investment vehicle (such as the Fund) might result in the assets of the vehicle being deemed to constitute “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code. Were the assets of the Fund to constitute “plan assets,” it would mean (among other things) that the fiduciary standards of ERISA and the prohibited transaction rules of ERISA and Section 4975 of the Code would apply to the operation of the Fund, which could, among other things, restrict the Fund from carrying out certain of the activities described herein.
- f. Under the Plan Assets Regulation, when a Benefit Plan Investor acquires an equity interest in an entity that is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act, the “plan assets” of the

Benefit Plan Investor include not only such equity interest, but also an undivided interest in each of the underlying assets of the entity, unless it is established that (i) participation in the entity by Benefit Plan Investors is not “significant,” or (ii) the entity is an “operating company” (including a “venture capital operating company” or “real estate operating company”), as such terms are defined in the Plan Assets Regulation. Participation in an entity will be considered “significant” if, on the date of the most recent acquisition or disposition of any equity interest in the entity, Benefit Plan Investors hold 25% or more of the total value of any class of equity interest in the entity. For purposes of this test, equity interests held by a person or its affiliates (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the entity’s assets or who provides investment advice for a fee (direct or indirect) with respect to those assets are disregarded, which would include the AIFM and the Investment Manager.

- g. The Fund does not presently expect investments by Benefit Plan Investors to be “significant” with Benefit Plan Investors holding 25% or more of the total value of any class of equity interest in the Fund. The Fund, however, may take action to prevent such investments by Benefit Plan Investors from becoming “significant,” including by limiting subscriptions for Shares by Benefit Plan Investors or redeeming Shares held by Benefit Plan Investors. If, despite these preventive actions, investments by Benefit Plan Investors become “significant,” the assets of the Fund could be subject to Title I of ERISA and Section 4975 of the Code and, as a result, the restrictions described above may apply to the activities of the Fund.
- h. Based on certain revisions to the Form 5500 Annual Return (“**Form 5500**”), certain Benefit Plan Investors that are subject to ERISA may be required to report certain compensation paid to the Fund’s service providers on Schedule C to Form 5500, regardless of whether participation in the Fund by Benefit Plan Investors is “significant.” For those Benefit Plan Investors, the information as set out in Memorandum is intended to satisfy the alternative reporting option requirements for “eligible indirect compensation,” as defined in the 2018 Instructions for Schedule C to Form 5500 or any applicable successor.
- i. Plans that are not subject to the requirements of ERISA or Section 4975 of the Code discussed above (such as governmental plans, as defined in Section 3(32) of ERISA, certain church plans, as defined in Section 3(33) of ERISA, and non-U.S. plans, as described in Section 4(b)(4) of ERISA) may be subject to provisions of other federal, state, local or non-U.S. law or regulation that are substantially similar to Section 406 of ERISA and/or Section 4975 of the Code (“**Similar Law**”). Accordingly, any such plans and the fiduciaries of such plans should consult with their legal counsel concerning all the legal implications of investing in the Fund.

BY THE ACQUISITION OF SHARES BY A BENEFIT PLAN INVESTOR OR OTHER PLAN SUBJECT TO SIMILAR LAW, THE INVESTOR AND THE FIDUCIARY MAKING THE INVESTMENT DECISION ON BEHALF OF THE INVESTOR (IN ITS INDIVIDUAL AND FIDUCIARY CAPACITIES) WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT (A) THE ACQUISITION, HOLDING AND DISPOSITION OF SHARES (OR ANY INTEREST THEREIN) WILL NOT CONSTITUTE OR RESULT IN A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION OF ANY SIMILAR LAW, (B) THE INVESTMENT BY SUCH INVESTOR IN THE FUND IS PRUDENT FOR THE INVESTOR (TAKING INTO ACCOUNT ANY APPLICABLE LIQUIDITY AND DIVERSIFICATION REQUIREMENTS OF ERISA), (C) THE INVESTMENT IN THE FUND IS PERMITTED UNDER ERISA, THE CODE, SIMILAR LAW AND THE GOVERNING PLAN DOCUMENTS, (D) NEITHER THE FUND NOR ANY OF ITS AFFILIATES HAS UNDERTAKEN TO ACT AS A FIDUCIARY UNDER ERISA, THE CODE OR OTHER APPLICABLE LAW WITH RESPECT TO SUCH

ACQUISITION, AND (E) NO ADVICE PROVIDED BY THE FUND OR ANY OF ITS AFFILIATES HAS FORMED A PRIMARY BASIS FOR ANY INVESTMENT DECISION BY SUCH INVESTOR IN CONNECTION WITH SUCH ACQUISITION.

THE SALE OF SHARES TO A BENEFIT PLAN INVESTOR OR OTHER PLAN SUBJECT TO SIMILAR LAW IS IN NO RESPECT A REPRESENTATION BY THE FUND OR ANY OF ITS AFFILIATES THAT THE INVESTMENT BY SUCH INVESTOR MEETS ALL THE RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY SUCH INVESTORS GENERALLY OR BY ANY PARTICULAR INVESTOR, OR THAT THE INVESTMENT IS APPROPRIATE FOR SUCH INVESTORS GENERALLY OR FOR ANY PARTICULAR INVESTOR.

PROSPECTIVE BENEFIT PLAN INVESTORS AND OTHER PLANS SUBJECT TO SIMILAR LAW ARE STRONGLY URGED TO CONSULT THEIR OWN ERISA AND TAX ADVISORS REGARDING THE CONSEQUENCES OF AN INVESTMENT IN THE FUND.

## **26 AMENDMENTS TO THE MEMORANDUM**

The Memorandum may be amended by the General Partner without the consent of any Shareholders:

- a. to amend any provision of the Memorandum that requires any action to be taken by or on behalf of the Fund pursuant to requirements of the 1915 Act if the provisions of the 1915 Act are amended, modified or revoked so that the taking of such action is no longer required;
- b. to take such action in light of changing legal or regulatory conditions as is necessary in order to permit the Fund, as the case may be, to continue in existence, including, without limitation, the 2016 Act, the AIFM Rules, US Investment Company Act, the US Securities Act and ERISA;
- c. to delete or add any provision of this Memorandum required to be so deleted or added by a regulatory authority, state securities commission or similar agency, which addition or deletion is deemed by such regulatory authority, commission or agency to be for the benefit or protection of the Shareholders;
- d. to add to the duties or obligations of the General Partner, the AIFM or to surrender any right granted to the General Partner herein, for the benefit of the Shareholders;
- e. to correct any clerical mistake or to correct or supplement any immaterial provision herein that may be inconsistent with any other provision herein or therein, or correct any printing, typographical, stenographic or clerical errors or omissions, that will not be inconsistent with the provisions of this Memorandum;
- f. to make changes negotiated with any prospective Investors or Investors admitted after the First Closing so long as the changes do not adversely affect the rights and obligations of any existing Investors in any material respect;
- g. to make any amendment which the General Partner reasonably determines in good faith to be in the best interests of the Fund provided that the changes do not (i) adversely affect the rights and obligations of any existing Investor in any material respect and (ii) the amendment is not objected to by Shareholders representing fifty per cent (50%) or more of Aggregate Fund Commitments within 15 Business Days of notice being given thereof; or
- h. to bring the Memorandum in line with amendments to the Articles made in accordance with the terms of the Articles.

Subject to the above, this Memorandum may not be amended without the consent of each Shareholder adversely affected by such amendment regarding amendments that (a) adversely affect the limited liability of such Shareholder, (b) adversely affect the interest of such Shareholder in the income or distributions of the Fund or (c) increase such Shareholder's Commitment. In other circumstances, any change to the Memorandum will be subject to a Shareholders 50% Consent.

In the event of any amendment being made pursuant to this Section, the General Partner shall send a copy of the amended Memorandum to each Investor.

## SCHEDULE 1 - PRIVACY NOTICE

Unless otherwise defined, capitalised terms used throughout this Privacy Notice will have the meanings ascribed to such terms in the Memorandum.

### 1. Scope of this Privacy Notice

Investors who are individuals as well as individuals related to Investors (including notably contact persons, representatives, agents, shareholders and beneficial owners) are hereby informed about the processing of their personal data (i.e. data by which individuals may be directly or indirectly identified) as well as of their rights in accordance with the Data Protection Legislation (the “**Privacy Notice**”) and in accordance with GDPR.

### 2. Data Controller

- a. Any personal data (i.e. data by which an individual may be directly or indirectly identified) provided to or collected by the Fund will be processed (i.e. used, stored, transmitted, etc.) in accordance with this Privacy Notice by Blueorchard Financial Inclusion Fund SCA SICAV-RAIF, represented by BlueOrchard Invest, S.à.r.l. (the Fund), having its registered office at 1 rue Goethe, L-1637 Luxembourg, Grand Duchy of Luxembourg, acting as data controller.
- b. If Investors or individuals related to Investors have any questions or comments or want to exercise their rights, they may contact the AIFM at: [DPCP@blueorchard.com](mailto:DPCP@blueorchard.com).
- c. Other actors involved in the management of the Investor relationship may process personal data for their own purposes in their capacity as data controllers (for instance the Service Providers). In such case, these processing activities take place under the sole responsibility of these independent controllers and are governed by separate privacy notices.

### 3. Personal Data being processed

- a. Information provided to the Fund may include but is not limited to (the “**Personal Data**”):
  - i. identification data (e.g. name, e-mail, postal address, telephone number, country of residence);
  - ii. personal characteristics (e.g. nationality, date and place of birth);
  - iii. government issued identifiers (e.g. passport, identification card, tax identification number, national insurance number);
  - iv. financial information (e.g. bank details, credit history and credit score, income and other relevant information about the Investor' s financial situation);
  - v. tax domicile and other tax related documents and information;
  - vi. knowledge and experience in investment matters, including investments previously made;
  - vii. origin of funds and assets;
  - viii. communication data (e.g. exchange of letters, telephone recordings, e-mail); or
  - ix. any other personal information Investors have provided directly to the Fund.
- b. The Fund may collect Personal Data directly from the Investors or individuals related to the Investors or from other public or private legitimate sources.

### 4. Purposes for which Personal Data is being processed

- a. The Fund processes the Personal Data where such processing is necessary:

- i. For the conclusion and performance of a contract if the Investor is an individual

This includes the processing of Personal Data for the purpose of the provision of Investor-related services including account administration, handling of orders, management of subscription, redemption and transfer of Shares, maintaining the Register and distributions, managing distributions including the allocations of profit and loss between Investors, internal audit validations, communications and more generally performance of services requested by and operations in accordance with the instructions of the Investor.

- ii. For compliance with legal and regulatory obligations

This includes the processing of Personal Data for the purpose of compliance with applicable legal and regulatory obligations such as the applicable legislation on markets in financial instruments (“**MIFID**”), Know-Your-Customer (“**KYC**”), and Anti-Money Laundering and Combating the Financing of Terrorism (“**AML/CFT**”), accounting obligations, complying with requests from, and requirements of, local or foreign regulatory or law enforcement authorities, tax identification and, as the case may be, reporting, notably under the act of 18 December 2015 concerning the automatic exchange of financial account information in tax matters implementing Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU), which notably is aimed at the implementation by financial institutions of reporting and due diligence rules which are fully consistent with those set out in OECD's standard for automatic exchange of financial account information (commonly referred to as the Common Reporting Standard or “**CRS**”), the act of 24 July 2015 approving the Agreement between the Grand Duchy of Luxembourg and the Government of the United States of America in view to improve international tax compliance and relating to the dispositions of the United States of America concerning the exchange of information commonly called the “**FATCA**”, as the aforementioned laws may be modified from time to time, and any other automatic exchange of information (“**AEI**”) regimes to which the Fund may be subject from time to time.

With respect to FATCA and/or CRS purposes, (i) Personal Data may be processed and transferred to the Luxembourg Direct Tax Authority who may transfer such data to the competent foreign tax authorities, including the US Internal Revenue Service or any other US competent authority, only for the purposes provided for in the FATCA and the CRS rules as well as to service providers for the purpose of effecting the reporting on the Fund's behalf and (ii) for each information request sent to the Investors, addressing such information requests is mandatory and failure to respond may result in incorrect or double reporting;

- iii. For the purpose of legitimate interests

Personal Data will be processed for risk management and fraud prevention purposes, for the evaluation of the Investor's financial needs, monitoring the investor's financial situation including assessing its creditworthiness and solvency, to manage litigation and for marketing purposes. The Fund may also process Personal Data to the extent required for the establishment, exercise or defence of legal claims, for the protection of the rights of another natural or legal person or in the context of mergers, acquisitions and divestitures and the management of transactions related thereto.



If Personal Data was provided to the Fund by the Investor (especially where the Investor is a legal entity), the Fund may also process Personal Data relating to Investor-related individuals in its legitimate interest for the purposes of the provision of Investor-related services including account administration, handling of orders, evaluation of the Investor's financial needs, monitoring the Investor's financial situation including assessing its creditworthiness and solvency, management of subscription, redemption and transfer of Shares, maintaining the Register and distributions, managing distributions including the allocations of profit and loss between Investors, internal audit validations, communications and more generally the performance of services requested by and operations in accordance with the instructions of the Investor.

iv. Based on consent

This includes the use and further processing of Personal Data with the Investor's or the individual related to the Investor's consent (which consent may be withdrawn at any time, without affecting the lawfulness of processing based on consent before its withdrawal), e.g. for the purpose of receiving marketing materials (about products and services of the group of companies to which the Fund belongs or those of its commercial partners) or recommendations about services.

- b. Investors or individuals related to Investors only have to provide those Personal Data that are necessary for the formation and termination of the relationship with the Fund and that are required for the Fund to comply with its legal obligations. Without the provision of these Personal Data, the Fund will not be able to enter into or continue the execution of the contract with the Investor or to perform a transaction.

## **5. Data Recipients**

The Fund may disclose Personal Data to recipients such as:

- i. any third parties as may be required or authorised by law (including but not limited to public administrative bodies and local or foreign public and judicial authorities, including any competent regulators);
- ii. any third parties acting on behalf of the General Partner or the Fund, such as the Service Providers, including their respective advisers, auditors, delegates, agents and service providers;
- iii. any subsidiary or affiliate of the General Partner or the Fund (and their respective representatives, employees, advisers, agents, delegates, agents and service providers);
- iv. any of the General Partner's respective shareholders, representatives, employees, advisers, agents or delegates;
- v. persons acting on behalf of Investors, such as payment recipients, beneficiaries, account nominees, intermediaries, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, companies in which the Investor has an interest in securities; and
- vi. parties involved in connection with any business reorganisation, transfer, disposal, merger or acquisition on the level of the Fund.

## **6. Transfer of Personal Data**

- a. For the purposes listed under Section 5 of this Schedule I, Personal Data will be transferred

to any of the aforementioned recipients and service providers in countries located in or outside of the EEA.

- b. Personal Data will not be transferred outside of the EEA.
- c. Personal Data may be transferred to a country outside of the EEA on the basis of the fact that the European Commission has decided that such country ensures an adequate level of protection. Certain countries in which recipients and data processors may be located and to which Personal Data may be transferred may however not have the same level of protection of Personal Data as the one afforded in the EEA. Personal Data transferred to countries outside of the EEA in such case will be protected by appropriate safeguards such as standard contractual clauses approved by the European Commission. The Investors who are individuals and individuals related to Investors whose data may be covered by such transfer may obtain a copy of such safeguards by contacting the Fund at the contact details set out in Section 2 of this Schedule.

## **7. Data Retention Period**

- a. The Fund is subject to various retention and documentation obligations, which *inter alia* follow from the commercial code (*Code de Commerce*) and from AML and KYC legislation. The retention periods provided by those laws vary from five (5) to ten (10) years. If any relevant legal claims are brought, the Fund may continue to process the Personal Data for such additional periods as necessary in connection with such claims.
- b. The retention period will also be determined by the legal limitation periods that can for example be set forth by the commercial code and amount to up to ten (10) years after the end of the contractual relationship with the Investor.

## **8. Automated Decision-Making Process including Profiling**

The Fund does not use automated decision-making or profiling. Should the Fund use these procedures in individual cases, it will inform Investors separately.

## **9. Individual's Rights**

The following rights apply to the Investor who is an individual and to individuals related to the Investor (whether the latter is an individual or not) whose Personal Data have been provided to the Fund. All references made to Investors below are deemed to refer to the individuals related to such Investors if the Investors are not themselves individuals.

- a. Right to information, rectification, erasure and restriction of processing

Investors may request to obtain at no costs, within reasonable intervals, and in a timely manner, the communication of their Personal Data being processed, as well as all information on the origin of those data.

Investors have the right to rectify their Personal Data held about them that are inaccurate.

In cases where the accuracy of the Personal Data is contested, the processing is unlawful, or where Investors have objected to the processing of their Personal Data, Investors may ask for the restriction of the processing of such Personal Data. This means that Personal Data will with the exception of storage, only be processed with or for the establishment, exercise or defence of legal claims, for the protection of the rights of another natural or legal person or for reasons of important public interest

of the European Union or of an EU Member State. In case a processing is restricted, Investors will be informed before the restriction of processing is lifted.

Investors may request the deletion of Personal Data held about them, without undue delay when the use or other processing of such Personal Data is no longer necessary for the purposes described above, and notably when consent relating to a specific processing has been withdrawn or where the processing is not or no longer lawful for other reasons.

b. Right to withdraw consent

Investors have the right to withdraw their consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal.

c. Right to object

Investors may object to processing of their Personal Data which is based on the legitimate interests pursued by the Fund or by a third party. In such a case the Fund will no longer process these Personal Data unless the Fund has compelling legitimate grounds for the processing which override Investors' interests, rights and freedoms or for the establishment, exercise or defence of legal claims.

The Investors' right to object is not bound to any formalities.

d. Right to data portability

Where the processing of data is based on consent or the execution of a contract with Investors, Investors also have the right to data portability for information they provided to the Fund - this means that Investors can obtain a copy of their data in a commonly use electronic format so that they can manage and transmit it to another controller.

e. Right to lodge a complaint

In addition to the rights listed above, should an Investor or an individual related to an Investor considers that the General Partner does not comply with the applicable privacy rules, or has concerns with regards to the protection of their Personal Data, they may file a complaint with the Luxembourg data protection authority (the *Commission Nationale pour la Protection des Données*, “**CNPD**”) or another European data protection authority (e.g. in the country of residence of the Investor).

## **10. Amendment of this Privacy Notice**

This Privacy Notice may be amended from time to time to ensure that full information about all processing activities is provided. Changes to the Privacy Notice will be notified by appropriate means.

SCHEDULE 2 – THE SFDR ANNEX

# Pre-contractual disclosure for SFDR art. 9 financial products

**Sustainable investment** means an investment in an economic activity that contributes to an environmental or social objective, provided that the investment does not significantly harm any environmental or social objective and that the investee companies follow good governance practices.

The **EU Taxonomy** is a classification system, establishing a list of **environmentally sustainable economic activities**. For the time being, it does not include a list of socially sustainable economic activities. Sustainable investments with an environmental objective might be aligned with the Taxonomy or not.

ANNEX II

**Template pre-contractual disclosure for financial products referred to in Article 9(1), (2) and (3) of Regulation (EU) 2019/2088 and Article 5 of Regulation (EU) 2020/852**

**Product name:** BlueOrchard Financial Inclusion Fund SCA SICAV-RAIF  
**legal identifier:** n/a

## Sustainable Investment objectives

Does this financial product have a sustainable investment objective?

<input checked="" type="radio"/> Yes	<input type="radio"/> No
<input type="checkbox"/> It will make a minimum of sustainable investments with an environmental objective: 0 % <ul style="list-style-type: none"> <li><input type="checkbox"/> in economic activities that qualify as environmentally sustainable under the EU Taxonomy</li> <li><input type="checkbox"/> in economic activities that do not qualify as environmentally sustainable under the EU Taxonomy</li> </ul>	<input type="checkbox"/> It promotes Environmental / Social (E/S) characteristics and while it does not have as its objective a sustainable investment, it will have a minimum proportion of ___% of sustainable investments <ul style="list-style-type: none"> <li><input type="checkbox"/> with an environmental objective in economic activities that qualify as environmentally sustainable under the EU Taxonomy</li> <li><input type="checkbox"/> with an environmental objective in economic activities that do not qualify as environmentally sustainable under the EU Taxonomy</li> <li><input type="checkbox"/> with a social objective</li> </ul>
<input checked="" type="checkbox"/> It will make a minimum of sustainable investments with a social objective: 75 %	<input type="checkbox"/> It promotes E/S characteristics, but will not make any sustainable investments

### What is the sustainable investment objective of this financial product?

As its primary objective and reason for being, the Fund seeks to provide investors with access to investments in emerging markets that are made for the purpose of advancing a sub-set of the United Nations Sustainable Development Goals (“SDGs”, “the Goals”). The Fund builds upon BlueOrchard’s 20-year track record of impact in the pursuit of financial inclusion by leveraging our best-in-class deal sourcing and impact measurement frameworks to identify equity investment opportunities with emerging and frontier market financial intermediaries operating in the microfinance and SME finance sectors. The Fund aims to be a catalytic force in not only providing capital support for proven institutions in the micro and MSME financing sector. This Fund represents BlueOrchard’s

Sustainability indicators measure how the environmental or social characteristics promoted by the financial product are attained.

first initiative in developing a sustainable, financial inclusion-oriented product in the private equity market. The Fund is viewed as a strong compliment to the existing platform of exclusively Article 9 funds already focusing on the provision of debt financing to similar financial intermediaries around the developing world. The Fund aims to contribute towards the following SDGs specifically:

- Goal 1: No Poverty
- Goal 3: Good Health and Well-Being
- Goal 5: Gender Equality
- Goal 8: Decent Work and Economic Growth
- Goal 9: Industry, Innovation, and Infrastructure
- Goal 10: Reduced Inequalities; and
- Goal 13: Climate Action

Each sustainable investment should positively contribute to at least one of those seven Goals, without significantly harming any sustainable objective.

There is no external reference benchmark designated for the purpose of attaining the sustainable investment objective, but internal proprietary assessments that can serve as benchmark are in place.

● ***What sustainability indicators are used to measure the attainment of the sustainable investment objective of this financial product?***

Each investment is expected to have different characteristics in its contributions towards the sustainability investment objective of the Fund and will therefore combine some standard and some custom contribution indicators. These indicators will be determined pre-investment and tracked and reported regularly during the holding period.

Each investment will track and report on the following elements of its social impact

- Number of beneficiaries\* in rural/urban areas
- Jobs created or maintained

\*beneficiaries are defined as people reached through responsible financial services in emerging market economies.

At least one additional investment specific indicator, aligned to at least one of the selected seven SDGs, will be tracked and reported. Examples of such custom indicators may include:

- Number of female/male beneficiaries
- Beneficiaries having access to affordable financial services
- Volume of investments intermediated to least developed economies
- Beneficiaries reached with affordable health/life insurance
- Beneficiaries reached with affordable climate insurance
- Women beneficiaries that have access to affordable insurance services
- Number of small-scale enterprises financed
- Total number of digital lending/insurance beneficiaries
- Estimated digital lending/insurance YoY growth

**Principal adverse impacts** are the most significant negative impacts of investment decisions on sustainability factors relating to environmental, social and employee matters, respect for human rights, anticorruption and antibribery matters.

***How do sustainable investments not cause significant harm to any environmental or social sustainable investment objective?***

Each sustainable investment shall contribute solutions to at least one of the global challenges addressed by a sub-set of the United Nations Sustainable Development Goals (“SDGs”, “the Goals”), specifically:

- Goal 1: No Poverty
- Goal 3: Good Health and Well-Being
- Goal 5: Gender Equality
- Goal 8: Decent Work and Economic Growth
- Goal 9: Industry, Innovation, and Infrastructure
- Goal 10: Reduced Inequalities; and
- Goal 13: Climate Action

Each sustainable investment should not significantly harm any sustainable objective.

Specific Sustainability & Impact (“S&I”) due diligence and frameworks that may include proprietary tools like ESG scorecards will be used to assess all potential investments to identify any significant harm or principal adverse sustainability impacts towards the sustainable investment objective of the Fund.

Each investment in the Fund is carefully selected based on the investee’s ability to provide both a reasonable financial return for investors and a positive impact on the communities in which they conduct business. The sustainability and impact objectives of the Fund are explicitly aligned with the concept of trying to catalyze the advancement of the SDGs and expand the market for financial intermediaries specializing in micro and MSME financing in emerging markets. The Fund, in developing its pre-inception pipeline has already passed over opportunities to invest in financial intermediaries that are deemed as being misaligned, or insufficiently aligned, with the sustainability and impact objectives of the Fund.

The notion of “do no harm” is at the core of the Fund’s purpose and BlueOrchard closely and very actively monitors developments in emerging markets and specific sectors to identify negative industry trends where they arise and to reassess investment strategy where necessary in that context.

All relevant indicators for adverse impacts on sustainability factors will be assessed at the time of investment.

As part of the ongoing monitoring of its investments, the Fund may, but is not obliged to, reassess any investment against any significant harm to any goal during the holding period.

***How have the indicators for adverse impacts on sustainability factors been taken into account?***

Specific S&I due diligence and frameworks will be used to vouch the Fund considers the relevant available principal adverse impact indicators (PASI) and to ensure that it does not significantly harm (DNSH) any environmental objective of the Fund.

The Fund may, but is not obliged to, reassess any investment against any significant harm or PASI during the holding period.



– **How are the sustainable investments aligned with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights?**

The S&I due diligence and frameworks will include an assessment of alignment with OECD Guidelines for Multi-national Enterprises and UN Guiding Principles on Business and Human Rights via the ESG Scorecard analysis. Any opportunity found not to be aligned with these guidelines will not be eligible for investment.



**Does this financial product consider principal adverse impacts on sustainability factors?**

- Yes  
 No



The investment strategy guides investment decisions based on factors such as investment objectives and risk tolerance.

**What investment strategy does this financial product follow?**

The Fund aims to provide positive financial returns alongside a demonstrable sustainable impact return. It will do so by integrating sustainability and impact criteria across the full investment cycle. From selecting investments that can positively contribute to the sustainable objectives of the Fund and with sound S&I practices, to regular monitoring of S&I indicators and reporting.

The Fund invests only in business models that create a positive contribution towards at least one of the social objectives.

Each sustainable investment shall contribute solutions to at least one of the global challenges addressed by a sub-set of the United Nations Sustainable Development Goals (“SDGs”, “the Goals”), specifically:

- Goal 1: No Poverty
- Goal 3: Good Health and Well-Being
- Goal 5: Gender Equality
- Goal 8: Decent Work and Economic Growth
- Goal 9: Industry, Innovation, and Infrastructure
- Goal 10: Reduced Inequalities; and
- Goal 13: Climate Action

Specific indicators per investment will be selected, tracked and reported.

In addition, the investment process will follow best practice alignment with the Operating Principles for Impact Management (“OPIM”).

● **What are the binding elements of the investment strategy used to select the investments to attain the sustainable investment objective?**

As an impact fund focused on investments in emerging markets, the Fund Prospectus, and Investment Guidelines each contain extensive requirements (all of which are binding upon BlueOrchard as the Portfolio Manager) in respect of investment selection and achievement of impact objectives.

The binding elements of the Fund are:

- The Fund will not knowingly invest in any activity that is involved in Excluded Investments, as per the IFC Exclusion List
- All sustainable investments in the Fund will aim to positively contribute to at least one of the seven Sustainable Development Goals outlined above
- The Fund's investment universe consists of organizations that have low or medium risk ESG ratings, as indicated by the ESG rating scale. Investments into "high ESG risk" are possible but require an additional Impact Committee approval and might require additional engagement with the investee, or additional monitoring requirements (to be defined during the Impact Committee). "Very high ESG risk" organizations are excluded from the Fund's investment universe.
- The Fund targets investments with "Very High" impact and "High" impact, as indicated by the Impact rating scale. Investments into "Medium Impact" are possible but require an additional Impact Committee approval and possible additional engagement and/or monitoring with the investee (to be defined during the Impact Committee). Investments with "Low" impact will be excluded from the investment universe.

The determinations of asset allocation, the regional focus and investment concentration limits, the requirements for impact and ESG assessment are all referenced in the fund documents provided to investors prior to and during the life of an investment in the Fund.

Good governance practices include sound management structures, employee relations, remuneration of staff and tax compliance.

● **What is the policy to assess good governance practices of the investee companies?**

The S&I due diligence and frameworks will include pre-investment screens and an assessment of the good governance practices of each investment, including on factors such as a Code of Conducts and ESG incident screening.

Post-investment, changes to these factors will be monitored, assessed and engaged with.

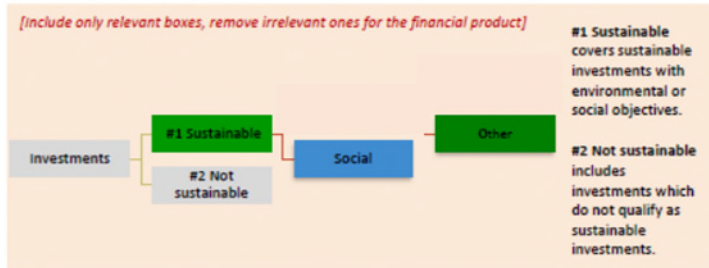
All material changes in management, corporate strategy, ownership etc. are contractually required for disclosure to BlueOrchard and subject (in specific cases such as change in ownership or strategy) may be subject to specific governance involvement of BlueOrchard designated members of the Target company's Board of Directors.





## What is the asset allocation and the minimum share of sustainable investments?

Asset allocation describes the share of investments in specific assets.



The Fund is exclusively allocated to investment in fully vetted (for impact and ESG purposes as well as economic purposes) financial institutions in emerging and frontier markets which, as a prerequisite, have a demonstrable potential and/or track record to contribute meaningfully to expanded financial inclusion and betterment of social and economic conditions in vulnerable communities. All these investments are considered “category 1” or sustainable as they are subject to the previously described requirements for impact/ESG/sustainability and required to achieve certain thresholds for admission into the Fund universe of acceptable investments.

In respect of “category 2” the Fund may, for purposes of liquidity management, also maintain an allocation of highly liquid assets including cash and AAA rated money market funds.

With the exception of the cash/liquidity management portion of the portfolio, all investments are considered and required to be “sustainable” and meet the criteria established in the Prospectus and Investment Guidelines.

● ***What investments are included under “#2 Not sustainable”, what is their purpose and are there any minimum environmental or social safeguards?***

As noted above the category 2 investments consist of highly liquid instruments such as traded money market funds and cash. These investments will also be assessed against the specific S&I due diligence and frameworks to ensure the respect of minimum environmental or social safeguards.



### Can I find I find more product specific information online?

More product-specific information can be found on the website:

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

### SCHEDULE 3 - SHARE CLASSES

1. Class A Shares have the following features:

Investors	Eligible Investors
Minimum Commitment	One million US Dollar (USD 1,000,000)
Initial Issue Price	One thousand US Dollar (USD 1,000)
Management Fee	Two percent (2%) per annum of the Aggregate Commitments of Class A until the fourth (4th) anniversary of the Final Closing Date, thereafter, the Management Fee shall be based on Invested Capital and the Management Fee rate shall be reduced by ten (10%) each year.

2. Class CI Shares have the following features:

Investors	External AIFM and/or Investment Manager
Minimum Commitment	Not applicable
Initial Issue Price	One thousand US Dollar (USD 1,000)
Management Fee	Not applicable

3. Class E Shares have the following features:

Investors	Employees and directors of the Investment Manager and other persons selected by the Investment Manager
Minimum Commitment	Ten thousand US Dollar (USD 10,000)
Initial Issue Price	One thousand US Dollar (USD 1,000)
Management Fee	Zero-point five percent (0.5%) per annum of the Aggregate Commitments of Class E until the fourth (4th) anniversary of the Final Closing Date, thereafter, the Management Fee shall be based on Invested Capital and the Management Fee rate shall be reduced by ten (10%) each year.
Redemption right	Yearly, as of the last calendar day of each Fiscal Year.
Redemption price	Net Asset Value per Share