



# PROSPECTUS

## CUSTODIA FUND PUBLIC LIMITED COMPANY

# PROSPECTUS

**If you are in any doubt about the contents of this prospectus you should consult a person who specialises in advising on the acquisition of shares and other securities.**

**Custodia Fund Public Limited Company (“the Company”) accepts responsibility for the information contained in this document.**

**The Directors of the Company have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or opinion. The Directors accept responsibility accordingly.**

**A copy of this Prospectus has been sent for registration to the Companies Registry in Gibraltar as is required under section 52 of the Companies Ordinance.**

### IMPORTANT INVESTMENT WARNING

This Company has been established in Gibraltar as an experienced investor fund. It is suitable only for those who fall within the definition of “experienced investor” contained in the Financial Services (Experienced Investor Funds) Regulations 2005.

Requirements which may be deemed necessary for the protection of retail or non-experienced investors, do not apply to experienced investor funds. By acknowledging this statement you are expressly agreeing that you fall within the definition of an “experienced investor” and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of this Company are acceptable to you. Investment in experienced investor funds may involve special risks that could lead to loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of this Company and the potential risks inherent in this Company you should not invest in this Company.

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# 1 NOTICES

## **Custodia Fund Public Limited Company**

### **Incorporated in Gibraltar under the Companies Ordinance – 97477**

Prospectus relating to the continuous offering and issue of

- (a) 5,000,000 European Non-Voting Redeemable Preference Shares of nominal value of 0.01 Euros each (“the European Preference Shares”) in the Custodia European Sub-Fund established and maintained by the Company;
- (b) 6,250,000 North American Non-Voting Redeemable Preference Shares of nominal value of 0.01 US Dollars each (“the North American Preference Shares”) in the Custodia North American Sub-Fund established and maintained by the Company;
- (c) 6,250,000 Asian Non-Voting Redeemable Preference Shares of nominal value of 0.01 US Dollar each (“the Asian Preference Shares”) in the Custodia Asian Sub-Fund established and maintained by the Company.

The assets and liabilities of each of the Sub-Funds established and maintained by the Company shall be segregated on a Sub-Fund by Sub-Fund basis. The Directors shall have a discretion to determine the basis upon which any liability which they do not consider to be attributable to any specific Sub-Fund shall be allocated between Sub-Funds (including conditions as to subsequent re-allocations if circumstances so permit) and shall have power at any time and from time to time to vary such basis.

No application has been made for the Preference Shares to be listed on any stock exchange. The Directors do not expect a secondary market to develop in the Preference Shares.

No person is authorised to give any information or to make any representation in connection with the issue of Preference Shares which is not contained or referred to in this Prospectus and, if given or made, such information or representations may not be relied upon as having been authorised by the Company or its Directors.

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, AND HAVE NOT BEEN REGISTERED WITH, OR APPROVED BY, ANY STATE SECURITIES OR ANY OTHER UNITED STATES REGULATORY AUTHORITY. NO SUCH AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS, NOR IS IT INTENDED THAT ANY SUCH AUTHORITY WILL DO SO. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Accordingly, the Preference Shares may not be offered, sold or delivered, directly or indirectly, in the United States, its territories or possessions or any area subject to its jurisdiction, including the Commonwealth of Puerto Rico, or to any citizen or resident thereof (including any corporation, partnership or other entity organised or created under the laws of the United States or any political subdivision thereof) or to any estate or trust the income of which is subject to United States Federal Income Taxation, regardless of its source or to any person, corporation, partnership or other entity qualifying as a "US Person" as defined under the Securities Act from time to time (each such prohibited person being a "US Person"). The Company will not be registered under the United States Investment Company Act of 1940, as amended.

In addition, the Preference Shares shall not be offered or sold, directly or indirectly, to any resident of Gibraltar or Gibraltar as defined under Gibraltar law.

The Prospectus does not constitute an offer or solicitation to anyone in any jurisdiction in which such offer or solicitation is not lawful or in which the person making such offer or solicitation is not qualified to do so. In particular, the Company is neither an authorised nor a recognised collective investment scheme for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom ("FSMA") and investor's

rights in the Company may not be protected by the UK Investors' Compensation Scheme. Shares in the Company may only be promoted in the United Kingdom in accordance with the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (the "CIS Order"). In the case of a communication made by a person authorised under FSMA, these Particulars are (a) communicated to persons outside the United Kingdom ("overseas recipients") in accordance with Article 8(1) of the CIS Order and (b) communicated to or directed at persons in the United Kingdom who fall within an exemption contained in the CIS Order or are otherwise persons to whom these Particulars may be communicated. These Particulars are not directed at and must not be acted on or relied on by, any other persons.

In the case of a communication made by persons who are not authorised pursuant to FSMA, these Particulars are (a) communicated to overseas persons in accordance with Article 12(1) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (the "FP Order") and (b) communicated to or directed at persons in the United Kingdom who fall within an exemption contained in the FP Order or are otherwise persons to whom the Particulars may be communicated.

**The issue of Preference Shares shall be substantially on the terms set out herein.**

## 1.1 Important Warnings

Each investor in the Preference Shares offered hereby must acquire such Preference Shares whether as principal or agent for investment and not with the intention of distribution, transfer or resale, either in whole or in part.

This Prospectus is based on the law and practice currently in force in Gibraltar and is subject to changes therein.

Subsequent to initial issue of Preference Shares, this Prospectus should be accompanied by and read in conjunction with the latest available half-yearly report of the Sub-Fund, as well as the most recent available audited annual report of the Company.

Potential investors in the Company should inform themselves as to (a) the possible tax consequences, (b) the legal requirements, and (c) any foreign exchange restrictions or exchange control requirements which they might encounter under the laws of the countries of their incorporation, citizenship, residence or domicile and which might be relevant to the subscription, purchase, holding or disposal of Preference Shares.

References to EUR are relative to Euros and references to USD are relative to dollars of the United States of America. References to pronouns of the masculine gender are deemed to include reference to pronouns of the feminine gender.

Purchasers should be aware that the Company may introduce selling and transfer restrictions from time to time, for the resale and other transfer of the shares, to reflect any change in applicable law, or regulation (or the interpretation thereof), or in practices relating to the resale or transfer of restricted securities generally. Each holder of a share shall be deemed, by acceptance of such share, to have agreed to any such changes.

The Company will, prior to the completion of the sale of the Preference Shares, give a prospective investor in the shares the opportunity to ask questions of, and receive answers from, the Company concerning the offering of the shares.

No dealer, salesman or other person has been authorised to give any information or to make any representation other than those contained in this Prospectus in connection with the offering of the Preference Shares, and, if given or made, such information or representation must not be relied upon as having been authorised by the Company.

## 1.2 Past Performance and Risks

An investment in the Company involves a degree of risk and, in particular, attention is drawn to the Risk Factors set out on section 5.3 of this document. **The risks include but are not limited to those factors discussed therein.**

An investment in the Preference Shares of the Company is speculative and no guarantee or representation is made that the Company will achieve its investment objectives. Prospective investors shall be experienced investors who understand the contents of this Prospectus and evaluate the risk factors and other considerations set out herein and are economically able to incur the risk of investment into any of the Sub-Funds. Prospective Investors should consult with their legal, business and tax advisers to determine the consequences of an investment in Preference Shares and to arrive at their own evaluation of them.

The Company does not accept an investor who is not an experienced investor. The Company seeks investment from Professional and/or High Net Worth investors and/or from financial institutions.

Investors should note that the value of Preference Shares of each Sub-Fund may go down as well as up, reflecting changes in the net asset value. There can be no certainty that the investment objectives of any Sub-Fund will be achieved. In view of the degree of risk inherent in an investment into any of the Sub-Funds (see "The Sub-Funds - Risk Factors"), investment is suitable only for investors who understand such risks and are able to bear them.

The Company has been incorporated recently and accordingly there is no record of past performance. In any event, you should remember that past performance is no guarantee of future returns. The Company's portfolios of assets are subject to normal market fluctuations as well as the risks inherent in investment instruments generally and those described below and there can be no assurance that appreciation of the Company's assets will occur or that losses will not be sustained. The price and value of Preference Shares may be subject to volatile movements and the amount of income from them can go down as well as up. You may not get back all or any of the amount that you originally invested. An investment in any of the Sub-Funds should be seen as medium to long term. Before investing, you should consider carefully whether this investment is appropriate for you, and if in doubt you should take independent advice. Where an underlying investment in a Sub-Fund is not denominated in the currency of the Sub-Fund which the investor holds, the effect of fluctuations in the rate of exchange may adversely affect the value of that investment, and this will be reflected in the value of the Shares in that Sub-Fund.

The volume of trading, the volatility of prices and the liquidity of issuers may vary, as may government supervision and regulation of securities exchanges, securities dealers and companies. The laws of some countries may limit a Sub-Fund's ability to invest in securities of certain issuers located in those countries. Different markets also have different clearance and settlement procedures. Delays in settlement could result in temporary periods when a portion of the assets of a Sub-Fund are not invested and no return is earned thereon or the Sub-Fund could miss attractive investment opportunities. Inability to dispose of a Sub-Funds' securities due to settlement problems could result either in losses to the Sub-Fund due to subsequent declines in value of the Sub-Fund security or, if the Sub-Fund has entered into a contract to sell the security, could result in possible liability to the purchaser. Certain markets may require payment for securities to be made before delivery with the accompanying credit risk for the Sub-Fund concerned.

There is a possibility of expropriation or confiscatory taxation, imposition of withholding taxes on dividend or interest payments, limitations on the removal of funds or other assets of the Company, political or social instability or diplomatic developments that could affect investments in certain countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

**If you are in any doubt about the contents of this Prospectus, you should consult your stockbroker, bank manager, solicitor, accountant or other financial adviser.**

### 1.3 Experienced Investor Funds Definition

This Company is established as an Experienced Investor Fund pursuant to the Financial Services (Experienced Investor Funds) Regulations, 2005 (the "EIF Regulations").

Within 14 days of the establishment of the Company, the Company shall file with the Financial Services Commissioner (the "Commissioner") of Gibraltar the following documents:

- (a) written notification of the establishment of the Company in the approved form accompanied by the prescribed fee;
- (b) a copy of the offering documents;
- (c) an opinion of a lawyer of at least 5 years professional standing and who is also a Barrister or Solicitor of the Supreme Court of Gibraltar, that the Company complies with the relevant provisions of the principal Ordinance and the EIF Regulations; and
- (d) such other documents as the Authority may require.

On filing of the above documents with the Commissioner, by virtue of Regulation 4(3) of the EIF Regulations, the Company shall be deemed to be authorised by the Commissioner to commence its investment business. The Commissioner is protected by law against liability arising from the discharge of his functions.

Only an experienced investor is eligible to invest in the Company. An experienced investor is a body or person who, at the time of the investment, falls into one of the following categories:

- (a) a person or partnership whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a body corporate which has net assets in excess of Euro 1,000,000 or which is part of a group which has net assets in excess of Euro 1,000,000;
- (c) an unincorporated association which has net assets in excess of Euro 1,000,000;
- (d) the trustee of a trust where the aggregate value of the cash and investments which form part of the trust's assets is in excess of Euro 1,000,000;
- (e) an individual whose net worth, or joint net worth with that person's spouse, is greater than Euro 1,000,000, excluding that person's principal place of residence; or
- (f) a participant who invests a minimum of Euro 100,000 in the Company.

A person meeting the above criteria is referred to in this Prospectus as an "Experienced Investor".

No person shall be accepted as an investor in the Company unless he has provided

- (a) written confirmation that he is an Experienced Investor; and
- (b) a written acknowledgement that he has received and accepted the investment warning required by the EIF Regulations to be contained in the offer document.

**Further information in relation to the regulatory treatment of experienced investor funds in Gibraltar may be obtained from the Gibraltar Financial Services Commissioner. (Website: [www.fsc.gi](http://www.fsc.gi))**

## 2 DEFINITIONS

In this Prospectus, the following standard terms and abbreviations are used from time to time, and they shall have the meanings given to them here :

Administrator	means Velay Financial Services Limited, trading as “VFS”
Articles	means the Articles of Association of the Company.
Auditors	means Deloitte & Touche
AUM	means assets under management
Banker	means Credit Suisse (Gibraltar) Limited
Board	means the board of directors for the time being of the Company.
Business Day	means any day on which banks in Gibraltar are open for normal business.
Commissioner	means the Financial Services Commissioner of Gibraltar (FSC).
Companies Ordinance	means the Companies Ordinance of Gibraltar (as the same shall be in force from time to time).
Company Secretary	means Velay Financial Services Limited, trading as “VFS”
Company	means Custodia Fund Public Limited Company
Depository	means Credit Suisse (Gibraltar) Limited
Dealing Date	means Friday, if it is a Business Day. Should a Friday not be a Business Day, the next Business Day thereafter.
Dealing Fee	means the fee charged on dealing as defined in Section 6.8 of this Prospectus.
Directors	means the Directors for the time being of the Company.
EIF Regulations	means the Financial Services (Experienced Investor Funds) Regulations, 2005 of Gibraltar (as the same shall be in force from time to time).
Eligible Investor	means an Experienced Investor as defined herein who is not prohibited from investing in the Company.
Founder Shares	means the 200 Ordinary Shares of EUR 100 each in the capital of the Company.
Sub-Funds	means the four Sub-Funds established and maintained by the Company as listed below:  Custodia European Sub-Fund  Custodia North-American Sub-Fund  Custodia Asian Sub-Fund
Gibraltarian	means any person defined as Gibraltarian under the Gibraltarian Status Ordinance (as the same shall be in force from time to time).
High Water Mark	means the reference level from which performance fees will be calculated.

Initial Subscription Period	means the period of time between the date of this Prospectus and the 30th day of November 2006
Investment Manager	means the company appointed by the Board as set out in Section 6.3 of this Prospectus
Net Asset Value or NAV	means the amount determined on any Dealing Date calculated in accordance with the principles set out on Section 7.
Nominal Shares	means Nominal Shares of with a nominal value of;  EUR 0.01 (EUR one cent) per share USD 0.01 (USD one cent) per share CHF 0.01 (CHF one cent) per share
Performance Period	means each 3 months period after the 31st day of March 2007. The first performance period will run from the end of the Initial Subscription Period until 31 March 2007.
Preference Shares	means Redeemable Preference Shares with a nominal value of;  EUR 0.01 (EUR one cent) per share USD 0.01 (USD one cent) per share CHF 0.01 (CHF one cent) per share
Prospectus	means this document.
Redemption Agent	means Velay Financial Services Limited, trading as "VFS"
Redemption Price	means the Net Asset Value per Preference Share minus the Dealing Fee.
Registrar	means Velay Financial Services Limited, trading as "VFS"
Resident of Gibraltar	means any person defined as a resident of Gibraltar under Section 2(1) of the Companies (Taxation and Concessions) Ordinance (as the same shall be in force from time to time)
Regulations	means Gibraltar Financial Services (Collective Investment Schemes) Regulations 2006 (as the same shall be in force from time to time)
Shareholder	means the holder of one or more Shares
Subscription Agent	means Velay Financial Services Limited, trading as "VFS"
Subscription Fee	means the fee that may be charged on subscription as set out in Section 6.8 of this Prospectus
Subscription Price	means the Net Asset Value per Preference Share plus the Dealing Fee.
US Person	means such person as is defined in Rule 902(o) of Regulation S under the United States Securities Act of 1933, as amended.
Valuation Date	means close of business on Friday, if it is a Business Day. Should a Friday not be a Business Day, then the close of business next Business Day thereafter.

### 3 LIST OF PARTIES AND ADDRESSES

COMPANY	CUSTODIA FUND PUBLIC LIMITED COMPANY Suite 210 Neptune House Marina Bay Gibraltar
BOARD OF DIRECTORS	GEORGIOS TSITOS (Chairman) RAYMOND JOUBAUD JOANNE SENE
ADMINISTRATOR (Also Fund Redemption Agent, Fund Subscription Agent, Registrar & Company Secretary)	VELAY FINANCIAL SERVICES LIMITED Operating address: Suite 210 Neptune House Marina Bay Gibraltar Registered office: Suite 4, 10th Floor International Commercial Centre 2a Main Street Gibraltar
INVESTMENT MANAGER	CUSTODIA FINANCE LIMITED Operating address: Suite 210 Neptune House Marina Bay Gibraltar Registered office: Suite 4, 10th Floor International Commercial Centre 2a Main Street Gibraltar
DEPOSITARY	CREDIT SUISSE (GIBRALTAR) LIMITED Neptune House Marina Bay Gibraltar
AUDITORS	DELOITTE & TOUCHE Merchant House 22/24 John Mackintosh Square PO Box 758 Gibraltar
LEGAL ADVISERS (In Gibraltar)	NUNEZ & CO Suite 4, 10th Floor International Commercial Centre PO Box 516 2a Main Street Gibraltar

## 4 KEY INFORMATION

The key information on the Company set out below should be read in conjunction with the full text of this Prospectus.

### **Structure**

The Company is a public investment company registered in Gibraltar under the Companies Ordinance number 97477 with limited liability on the 17th day of November 2006. The underlying investments of the Company will be segregated into different Sub-Funds according to the geographical domiciliation of these investments. A separate NAV will be calculated for each Sub-Fund on the valuation day.

### **Shares**

The Company's Articles allow for the Directors to establish and maintain separate Sub-Funds. In exercise of this power the Directors have created three separate Sub-Funds, namely the Custodia European Sub-Fund, Custodia North American Sub-Fund and the Custodia Asian Sub-Fund. This Prospectus relates to the offer to issue Preference Shares for each of these "Sub-Funds". Each Preference Shareholder shall carry the right to participate in the profits of the respective Sub-Funds in which the Preference Shares are held.

The Directors may decide to create an additional Sub-Fund, the Custodia Swiss Sub-Fund, in the future. In such a case, a new Prospectus shall be published by the Company.

### **Borrowing**

No Sub-Fund is permitted to borrow monies or securities in excess of 10% of the value of assets under management for such Sub-Fund.

### **Dividend Policy**

The dividend policy in respect of Preference Shares is specified in Section 5.2 of the Prospectus.

### **Risk Factors**

An investment in the Preference Shares of any Sub-Fund will involve a degree of risk (see "The Company – Risk Factors" Section 5.3 of the Prospectus).

### **Subscription and Redemption**

Preference Shares for the following Sub-Funds may be subscribed during the Initial Subscription Period at the initial price of;

- EUR 100 for each Preference Share in the Custodia European Sub-Fund
- USD 100 for each Preference Share in the Custodia North-American Sub-Fund
- USD 100 for each Preference Share in the Custodia Asian Sub-Fund

Once a Sub-Fund has commenced trading, Preference Shares may be subscribed at the prices set on the Dealing Date according to the procedure described in the Prospectus. Purchases of Preference Shares for each Sub-Fund may be subject to a Subscription Fee payable to the Investment Manager of up to 3%, calculated on the basis of, and added to, the purchase price.

The Administrator can make redemptions on any Dealing Date upon receipt of a properly completed and signed irrevocable redemption request. Please see Section 8.2 of the Prospectus.

### **Sale and Transfer Restrictions**

The shares are subject to sale and transfer restrictions in various jurisdictions. **Potential subscribers of Preference Shares are strongly recommended to seek advice as to any applicable laws and**

**regulations of the countries of their citizenship, residence or domicile which might be relevant to the subscription, holding, transfer or disposal of the shares of the Company.**

*Gibraltar*

Preference Shares will not be offered nor will any invitation to subscribe therefore be made to any residents of Gibraltar or to Gibraltarians.

Investments in the Company are not covered by the Gibraltar Investor Compensation Scheme.

*United Kingdom*

The Company is neither an authorised nor a recognised collective investment scheme for the purposes of the Financial Services and Markets Act 2000 of the United Kingdom ("FSMA") and investors' rights in the Company may not be protected by the UK Investors' Compensation Scheme. Shares in the Company may only be promoted in the United Kingdom in accordance with the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

*United States*

These securities have not been registered under the United States Securities Act of 1933 (as amended) and have not been registered with, or approved by, any state authority or any other United States regulatory authority. The Company will not be registered under the United States Investment Company Act of 1940, as amended. Accordingly the Preference Shares may not be offered, sold or delivered, directly or indirectly, in the United States, its territories or possessions or any area subject to its jurisdiction, including the Commonwealth of Puerto Rico, or to any citizen or resident thereof (including any corporation, partnership or other entity organised or created under the laws of the United States or any political subdivision thereof) or to any estate or trust the income of which is subject to United States Federal Income Taxation, regardless of its source or to any person, corporation, partnership or other entity qualifying as a "US Person" as defined under the Securities Act from time to time (each such prohibited person being a "US Person").

*Other European Economic Area Member States*

Promotion of the Shares may be permitted in other European Economic Area Member States, in accordance with the appropriate laws applicable in each member state. This statement is not intended as an indication or confirmation either that such promotion is permitted or that it is intended to promote the Shares in any such member state. Persons resident or domiciled in a member state who wish to subscribe for Shares, should seek professional advice as to all respects of the investment, including the legal, tax and exchange control consequences of doing so.

*Switzerland*

The Company is not registered with the Swiss Fund supervisory authority, the Federal Banking Commission. Accordingly, investors should note that no professional offer or distribution within the meaning of the Swiss Mutual Funds Act of 1994 may be conducted in or from Switzerland as regards the Shares. No shares may be offered or sold in or out of Switzerland except pursuant to an exemption granted by the Federal Banking Commission otherwise in compliance with the applicable investment fund regulations. This exemption is not being sought by the Company. Accordingly, this Prospectus is to be used exclusively for the personal use of addressees and their advisers and shall not be circulated by or to any unauthorized third parties.

**Investment Management**

The Board of Directors of the Company has appointed Custodia Finance Limited, Gibraltar as Investment Manager to manage the investments of the Sub-Funds. The Company will pay the Investment Manager a fee of 2% per annum, accrued weekly and payable monthly in arrears, covering the cost of investment management and investment advice provided to the Company. These fees will be paid from the Assets of the Sub-Funds pro rata.

The Company will also pay the Investment Manager a performance related fee of 10% of the increase in value of Preference Shares in any Performance Period as described in section 6.8.

### **Administration**

The Board of Directors of the Company has appointed Velay Financial Services Limited, a company incorporated in Gibraltar, as the Administrator. The Administrator will be paid an Administration fee per annum, accrued weekly and payable quarterly in arrears. The Administration fee will be charged to each Sub-Fund in accordance with the following scale :

AUM up to 50,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.15%
AUM from 50,000,000 to 100,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.10%
AUM above 100,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.07%

These fees will be paid from the Assets of the Sub-Funds. The Administrator shall also be reimbursed by the Company for all actual out-of-pocket expenses incurred on behalf of the Company. See "Company Operating Expenses."

### **Banker**

The Board of Directors has appointed Credit Suisse (Gibraltar) Limited to act as banker for the Company.

As Banker to the Company, the Depositary will earn fees on purchases and sales of the Sub-Funds' securities and any other fees as may be applicable, as well as fees on foreign exchange transactions related to purchases and sales of securities. Such fees shall be paid from the assets of the Company or the respective Sub-Fund, as appropriate.

### **Depositary**

The Board of Directors has appointed Credit Suisse (Gibraltar) Limited ("the Depositary") as Depositary on behalf of the Company, pursuant to a Depositary Agreement dated the 21st day of November 2006. In dealing with the assets of the Sub-Funds the Depositary will rely on the instructions of the Investment Manager and the Administrator.

The Depositary will not provide any other services or perform any other functions except safekeeping and the usual administrative matters relating to the Safe Custody of the Assets of the Company, and will have no other duties or responsibilities relating to the Company.

The Depositary may at the request of the Directors, and by mutual agreement, delegate its duties to a Sub-Custodian (each a "Sub-Custodian"). In the case of a Sub-Custodian selected by the Depositary, the liability of the Sub-Custodian shall be limited in the same manner as that of the Depositary.

The Depositary will provide Safe Custody services to the Fund subject to section 14 of the Custody Agreement, which states the following:

If the Company appoints other parties to hold assets and other property belonging to the Company ("Co-Depositaries"), and such parties are not appointed by the Depositary, the Company agrees to advise all investors in writing before or at the time of subscription to the Sub-Fund of the existence of these parties and shall specifically refer to this clause in any offering document or memorandum of the Company. All risks and consequences that might result for the Depositary shall be borne by the Company. The Depositary bears no liability nor provides any guarantees whatsoever for the performance of any obligations on the part of the Co-Depositaries, its affiliates, agents or representatives. In particular but without prejudice to the generality of the foregoing, the Depositary shall not be liable for any failure on the part of the Co-Depositaries, its affiliates, agents or representatives to pay outstanding cash or other assets due to the Company and/or failure to deal properly with corporate actions relating to the assets and other property. The Company hereby holds harmless and indemnifies and keeps indemnified the Depositary and its officers and employees from and against all liabilities, costs and damages of any kind (including, for the avoidance of doubt, all legal expenses incidental thereto) which may be incurred by any of them and all actions or proceedings which may be brought by or against them.

The Company will pay a safe-custody fee of 0.1% per annum of the average weekly value throughout the calendar year of the Sub-Funds' portfolio to the Depositary. The Company shall also pay the Depositary transaction fees which will be paid from the assets of the respective Sub-Funds. The Depositary's fee and out of pocket expenses incurred in connection with the custody of the assets shall be paid from assets of the respective Sub-Funds.

### **Company Secretary**

The Company Secretary shall be remunerated by the Company at the rate of Euro Four Thousand Five Hundred (EUR 4,500) per annum, payable quarterly in arrears, plus documented out-of-pocket expenses. The Company Secretary is responsible for maintenance and safe custody of all required records at the registered office, and maintaining the register of the Company's shareholders.

### **Reports and Audited Financial Statement**

The Company will have a 30th June financial year-end. The first financial year end will be as of 30th June 2007. The Company shall mail audited financial statements to shareholders at their registered addresses within four months after the fiscal year-end. The financial statements will be consolidated across all Sub-Funds and the results will be reported in Euros.

The Company will also produce semi annual unaudited financial statements on 31st December every year. The first semi annual unaudited financial statements will be as of 31st December 2007.

### **Taxation – Sub-Funds and Shareholders**

In view of the different jurisdictions where local laws may apply to subscribers, this Prospectus does not address the local tax consequences to potential investors of the purchase, ownership, and disposition of Shares. Prospective investors are urged to consult their own advisers in determining the possible tax, exchange control or other consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries and in which they conduct business.

#### *Gibraltar*

The Company shall apply to the Commissioner of Income Tax to seek the exercise of the powers vested in him in Rule 3 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 to exempt from tax the investment income of the Company. **There is no assurance that the Government of Gibraltar may not amend the tax system to the detriment of companies like the Company.**

The Government of Gibraltar has stated publicly that it intends to reform Gibraltar company tax legislation. The reforms are prompted by the position of the EU Commission that the current exempt tax regime offends against the State Aid provisions of EU law. The proposed Government reforms of the Gibraltar company tax system would result principally in the replacement of the Tax Exempt Company legislation with a corporate tax regime which does not discriminate between resident and non-resident companies.

It is not anticipated that the reforms to the Gibraltar company tax legislation will affect the exemption from tax of the Company's investment income. Consequently, the Company expects to continue to enjoy the exemption from tax on its investment income notwithstanding such reforms.

The following is a summary of the tax position as in effect on the date of this Prospectus and is subject to any change that may come into effect after such date. The Company shall apply to the Commissioner of Income Tax for an exemption to tax on its investment income. There are no deductions of any withholding taxes to shareholders for Gibraltar income tax purposes. No death duties, capital gains tax, gift, inheritance or capital transfer taxes are levied in Gibraltar. No stamp duty is levied in Gibraltar on the transfer of shares. The Company has paid capital duty of GBP 10 on the par value of the share capital of the Company, the cost of which forms part of the establishment expenses which have been borne by the Company. The stamp duty on any subsequent increase of share capital will be GBP 10.

The summary above does not purport to offer advice on the tax considerations that may be relevant to a decision to purchase Preference Shares. Prospective investors should consult their own tax advisers on the tax consequences of the purchase and transfer of Preference Shares in the Company including the effect of any changes to the tax laws.

#### *European Union Savings Tax Directive*

EU Council Directive 2003/48/EC of 3 June 2003 has been transposed into Gibraltar law by the Taxation (Savings Income) Ordinance 2004. This Ordinance provides that where a "paying agent" makes an "interest payment" to a "beneficial owner", which expressions are all defined in the Ordinance, resident in the European Union, the said paying agent has to report certain information to the competent authority in

Gibraltar which will then report to its counterpart authority in EU state of residence of the beneficial owner. The Company shall invest in securities which do not make interest payments within the definition in the Ordinance, in such manner that the reporting obligations contained in the Ordinance shall not apply to the Company.

## 5 THE COMPANY

The Company is an open-ended public investment company incorporated in Gibraltar under the Companies Ordinance of Gibraltar on the 17th day of November 2006 with the registered number 97477. Its registered office is at Suite 210 Neptune House, Marina Bay, Gibraltar. The Company is established as an Experienced Investor Fund pursuant to the EIF Regulations.

The Company's Articles allow for the issue of Preference Shares for the three Sub-Funds established and maintained by the Company. Each Preference Share shall carry the right to participate in the profits of their respective Sub-Funds' investments. A separate NAV will be calculated for each Sub-Fund on the Valuation Date.

### 5.1 Investment Objective and Strategy

The Sub-Funds shall invest in international equities and provide long term capital growth through investment in financially strong and growth oriented companies in established markets. The investment objective of the Sub-Funds is to generate performance exceeding the market benchmarks chosen, using a clearly defined multi-strategy investment approach throughout the international equity markets in three regions; North America, Europe and Asia.

The Sub-Funds shall invest as follows:

- 1) Custodia European Sub-Fund shall invest in equities of European companies quoted on any recognised exchange in EU member states, Switzerland, Liechtenstein, Norway, Turkey and Eastern European. The Custodia European Sub-Fund's base currency is Euros.
- 2) Custodia North-American Sub-Fund shall invest in equities of North American companies quoted on any recognised exchange in the United States and Canada. The Custodia North-American Sub-Fund's base currency is United States Dollars.
- 3) Custodia Asian Sub-Fund shall invest in equities of Asian companies quoted on any recognized exchange in Japan, Hong Kong, China, India, Singapore, Thailand, Taiwan, Malaysia and South Korea or other Asian countries. The Custodia Asian Sub-Fund's base currency is United States Dollars.

Each Sub-Fund will have an active investment process to prioritise stock selection and optimise performance based on quantitative analysis with a multi-strategy approach. The performance of each Sub-Fund will be measured against the following benchmarks:

Custodia European Sub-Fund	Dow Jones European 600 Index
Custodia North-American Sub-Fund	S&P 500 Index
Custodia Asian Sub-Fund	TSC Asia Ex Japan Index

The Sub-Funds may from time to time hold some of their assets in cash or short-term deposits and other money market instruments.

The Investment Manager will pay careful attention to exchange risk and controls and will exercise strict adherence to local securities laws. Each Sub-Fund will invest in assets denominated in a variety of currencies that are different to their respective base currency reflecting the fact that the Sub-Funds are also truly diversified.

The net proceeds of the offering of Preference Shares for each Sub-Fund will be invested in accordance with this investment objective.

Voting rights in underlying assets held by the Company will be exercised by the Board in such manner as is in the best interests of the Company and will be aimed at enhancing the value of these assets.

## 5.2 Investment Restrictions & Guidelines

### **Borrowing**

No Sub-Fund is permitted to borrow monies or securities in excess of 10% of the value of assets under management for such Sub-Fund.

### **Dividends**

In the event of dividends being declared for any Sub-Fund, they will only be paid out of the income and profits of that specific Sub-Fund. All dividends declared shall be payable to Preference Shareholders of record of the Sub-Fund as of the date that the dividend is declared by the Directors. There is no fixed period for the lapsing of entitlement to a dividend or any fixed date for the declaration of dividends. The Articles further provide that the Directors may direct that the payment of any dividend which has been declared can be satisfied, wholly or partly, by a distribution of specific assets.

### **Restrictions on activity**

The following restrictions apply equally to all Sub-Funds of the Company.

#### **Cash and short term deposits**

The cash and short term deposits will be kept with first class banks. The maximum maturity for these investments are 13 months with a maximum weighted average maturity of 90 days. The total of each Sub-Fund may be invested in cash or money market instruments in economic circumstances which the Directors consider requires this measure.

#### **Equities**

The value of any Sub-Fund's holdings in individual equities, issued by any one issuer, may not exceed 10% of the NAV at purchase price. The total of any Sub-Fund may be invested in equities.

#### **Other Funds and Hedge Funds**

In case any Sub-Fund invests in other collective investment schemes including hedge funds or structured products, whether established in Gibraltar or in any other jurisdiction, the total of such investments shall be limited to not more than 25% of the NAV. The value of the Sub-Fund's holdings in an individual Hedge Fund, with a redemption time of over one month, may not exceed 10% of the NAV.

#### **Options, warrants**

The value of warrants and options to subscribe for securities not already in the Sub-Fund must not exceed 5% of the NAV at the purchase price of the warrant or option.

#### **Hedging**

In order to reduce or eliminate risk arising as a result of fluctuations in interest or exchange rates and in the price of investments, hedging may (but will not of necessity) be undertaken. Such hedging may be carried out by the forward sale of currency or by using instruments traded on an eligible derivatives market.

#### **Other Investments**

Each Sub-Fund may make other investments of which the total direct holding by the Sub-Fund will be limited to not more than 10% of the NAV at the purchase price of the investment.

### 5.3 Risk Factors and Investor Suitability

An investment in the Preference Shares of the Company is speculative and no guarantee or representation is made that the Company will achieve its investment objectives. Prospective investors should carefully review and evaluate the risk factors and other considerations set forth below before subscribing. In addition to the usual risks associated with an investment in a business at an early stage of development, the Directors consider the following risk factors to be the most significant to potential investors:

- The Company expects to invest mainly in publicly quoted international securities included in major European, North American and Asian indices
- The Company expects to take minority interests in the companies in which it invests in countries where rights of minority shareholders may be inadequately protected
- Investment by the Company in the shares of smaller companies may be difficult to realise. In addition smaller companies frequently lack the financial strength, diversity and resources of larger companies and may find it more difficult to overcome, or survive, periods of economic slowdown or recession.
- Markets in which the Company invests may be subject to varying political and economic circumstances from time to time, resulting in price drops which may cause losses, and/or market illiquidity which may make it difficult to sell shares
- Companies in which the Company may invest may experience adverse business circumstances, or a general downturn in a given market, resulting in a decline in value
- The market perception of securities related to the type of companies the Company is seeking to invest in may change and, accordingly, the value of the Shares and of any investments made by the Company may decline.
- An investment in shares in a particular market means ipso facto an exposure to the currency of that market. Absent a foreign exchange hedge covering that share position, if that currency declines vis-à-vis the base currency of the Sub-Fund, the value of the share position as expressed in the base currency will drop. Despite the best efforts of the Investment Manager, judgment as to the value or attractiveness of a particular investment may prove wrong, resulting in a drop in value of the investment.
- The Company's business may be materially affected by the inability to recruit sufficient personnel of the right quality or qualifications, or by the loss of key personnel.
- There may be a change in government regulation or policies (whether in Gibraltar or any other Jurisdiction) which may materially and adversely affect the Company's activities.
- The price at which investors may dispose of their shares in the Company may be influenced by a number of factors, some of which may pertain to the Company, and others of which are extraneous. Investors may realise less than the original amount invested.
- An investment in the Company may not be suitable for all recipients of this document. Investors are accordingly strongly advised to consult their own investment advisers before making any decision to invest.
- A prospective investor should consider with care whether an investment in the Company is suitable for him in the light of his personal circumstances and the financial resources available to him.

**The risks listed are not exhaustive and do not therefore necessarily comprise all risks relevant to an investment in the Company.**

Investors should take into account that the value of Shares and income from them may fall as well as rise. Each Sub-Fund is denominated in a base currency; the base currency will fluctuate against other currencies and against assets of the Sub-Fund itself. Changing currency exchange rates can cause fluctuations in the value of Shares of the Sub-Fund.

Prospective investors should therefore be Experienced Investors and should take into account the IMPORTANT INVESTMENT WARNING contained on the first page of this Prospectus in deciding whether to invest in the Company.

Prospective Investors should consult with their legal, business and tax advisers to determine the consequences of an investment in Preference Shares and to arrive at their own evaluation of them.

#### 5.4 Company Operating Expenses

The Company will pay fees to its service contractors as set out in Section 6.8 of this Prospectus. All other operational expenses of the Company shall be paid upon approval by the Board. The Board is committed to keeping these expenses at the lowest level, so far as this lies within its powers.

## 6 MANAGEMENT AND ADMINISTRATION

### 6.1 Duties and Function of the Company's Board

The function of the Board is to conduct the Company's business operations and to review and be responsible for the activities of the Company. The Investment Manager and the Administrator will provide all investment management services which may be required for the Company's operations.

The Board will hold regular meetings and is responsible for the overall investment policy of the Company and review the investment and administrative affairs of the Company, the performance of the Investment Manager, the Administrator, the Depositary and the business of the Company. The Board engages the Investment Manager; the Administrator, Subscription Agent, Registrar and Redemption Agent; the Depositary; the Corporate Secretary; and the Auditor.

The Directors will receive remuneration for their service as Directors. The Company will pay each director an annual fee of Euro Four Thousand (EUR 4,000) for their services payable quarterly in arrears. The Company will also reimburse each Director for travel and other reasonable out-of-pocket expenses incurred in connection with his/her services. Directors may waive all or part of their fees and may assign their fees to their employers.

The Company's Articles of Association provide that Directors shall be liable to the Company for any acts, receipts, negligence or default only if such acts happen from failure to exercise due care and diligence in discharge of their functions.

### 6.2 The Directors of the Company

#### **Georgios Tsitos**

Mr Tsitos holds a B.Sc. Degree in Business Management and Finance from Geneva University. He has served as Managing Director, Executive Director and Board member of a number of companies. His specialism has been financial structuring and business development of companies, and he has a track record of developing these companies into successful business ventures. With 10 years of active operational involvement in the banking sector, Mr Tsitos will be providing corporate governance, compliance and cost monitoring to ensure the efficient functioning of the Company. Mr Tsitos will serve as the Chairman of the Board of Directors of the Company.

#### **Raymond Joubaud**

After a long career at Lombard Odier & Cie, Private Bankers in Geneva, Mr Joubaud served as the General Manager of The Gibraltar Private Bank Limited (now Lombard Odier Darier Hentsch Private Bank Limited) from 1st May 1995 to 30th June 1998. He was a director of GR Invest Limited, a Gibraltar authorised collective investment scheme and had responsibility for its management.

Since July 1998, Mr Joubaud has been Managing Director of Velay Financial Services Limited (formerly called Velay Services Limited) and of Armor Portfolio Management Limited, an investment firm authorised by the Financial Services Commissioner of Gibraltar. He has served as director and general manager of various authorised investment firms and collective investment schemes and at present still holds various such directorships. He has had extensive experience in private banking and in mutual funds.

#### **Joanne Sené**

Joanne Sené is a Director of Velay Financial Services Ltd, a Gibraltar company authorised by the Gibraltar Financial Services Commissioner to provide Collective Investment Scheme Administration services. She joined Velay Financial Services Ltd in 2003 after having worked in the Asset Management industry in

London for six years. On graduating from Reading University in 1996, she began her career at Henderson Global Investors working for the international equities desk. She later moved into the fixed income arena during her time as a Business Analyst with Morley Fund Management. In Gibraltar, she has extended her experience to the private client industry, managing client accounts and supervising all operations. Joanne is also Fund Manager and Director of an Experienced Investor Fund in Gibraltar

### 6.3 The Investment Manager

The Board has appointed Custodia Finance Limited to be the Investment Manager of the Sub-Funds. The Investment Manager is a company incorporated in Gibraltar on the 4th day of October 2006, registration number 97143. The Directors of Custodia Finance Limited are Georgios William Tsitos, Raymond Joubaud and Alessandro Petri. The Investment Manager is authorised by the Gibraltar Financial Services Commission to conduct the business of investment management.

The Investment Manager will implement the Company's investment objectives and policies as specified herein and will keep the Company's investments under daily review.

### 6.4 The Administrator

As Administrator, the Board has engaged Velay Financial Services Limited trading as "VFS" (the "Administrator"). The Administrator is a company incorporated in Gibraltar on the 6th day of March 1998, registration number 64204. The Administrator is authorised by the Financial Services Commissioner of Gibraltar to conduct the business of fund administration.

The Administrator is responsible for all day-to-day administration and accounting duties.

The Board has also appointed the Administrator as the Subscription and Redemption Agent of the Company. As such, the Administrator is responsible for the receipt of application forms and of redemption requests and arranges for the receipt of subscription monies by the Depositary and the issue of contract notes in respect of subscriptions and redemptions.

### 6.5 The Depositary

As Depositary, the Board has engaged Credit Suisse (Gibraltar) Limited. The Depositary is authorised under the Banking Ordinance 1992 of Gibraltar for deposit-taking business and it is authorised as a depositary under Section 27 of the Financial Services (Collective Investment Schemes) Ordinance 2005 of Gibraltar.

The Depositary shall designate when necessary one or more sub-depositaries (each "a Sub-Depositary") responsible for the custody of the assets of the Sub-Funds and the receipt of subscription monies.

The Depositary will not provide any other services or perform any other functions except safekeeping and the usual administrative matters relating to the Safe Custody of the Assets of the Company, and will have no other duties or responsibilities relating to the Company; for example the Depositary will not provide advisory services nor asset management services nor will it monitor investment management activities or investment strategies of the Company. The Depositary shall not supervise nor control the activities of the Investment Manager, the Trustee (or corresponding hierarchical level), the Administrator of the Company or the Directors of the Company. The Depositary does not warrant the contents of the relevant fund-documentation nor will it be involved in the management, administration or Net Asset Value calculations of

the Company. The Depositary does not act as sponsor or promoter of the Company. Therefore, the Depositary does not assume any liability for negligent or wilful misconduct of the Company's Investment Manager, the Trustee (or corresponding hierarchical level), the Administrator of the Company or Directors and potential investors should not rely upon the Depositary in deciding whether or not to invest in the Company.

The Company has appointed Credit Suisse (Gibraltar) Limited as Depositary on behalf of the Company pursuant to a Depositary Agreement dated the 21st day of November 2006.

Credit Suisse (Gibraltar) Limited will provide Safe Custody services to the Fund subject to section 14 of the Depositary Agreement, which states the following:

If the Company appoints other parties to hold assets and other property belonging to the Company ("Co-Depositaries"), and such parties are not appointed by Credit Suisse (Gibraltar) Limited, the Company agrees to advise all investors in writing before or at the time of subscription to the fund of the existence of these parties and shall specifically refer to this clause in any offering document or memorandum of the fund. All risks and consequences that might result for Credit Suisse (Gibraltar) Limited shall be borne by the Company. Credit Suisse (Gibraltar) Limited bears no liability nor provides any guarantees whatsoever for the performance of any obligations on the part of the Co-Depositary, its affiliates, agents or representatives. In particular but without prejudice to the generality of the foregoing, Credit Suisse (Gibraltar) Limited shall not be liable for any failure on the part of the Co-Depositary, its affiliates, agents or representatives to pay outstanding cash or other assets due to the Company and/or failure to deal properly with corporate actions relating to the assets and other property. The Company hereby holds harmless and indemnifies and keeps indemnified Credit Suisse (Gibraltar) Limited and its officers and employees from and against all liabilities, costs and damages of any kind (including, for the avoidance of doubt, all legal expenses incidental thereto) which may be incurred by any of them and all actions or proceedings which may be brought by or against them.

## 6.6 Banker

The Board of Directors has appointed Credit Suisse (Gibraltar) Limited to act as banker for the Company which includes the provision of the following services:

- a. acceptance of deposits and other repayable funds;
- b. Issuing and administering means of payment;
- c. Trading for account of the Company in:
  - i. Money Market Instruments;
  - ii. Foreign Exchange;
  - iii. Options;
  - iv. Exchange and interest rate instruments;
  - v. Transferable securities;
- d. dealing or arranging deals in securities, investments, options or other derivatives as agent of the Company;
- e. provision of foreign exchange services in connection with investment services.

As Banker to the Company, the Depositary will earn fees on purchases and sales of the Sub-Funds' securities and any other fees as may be applicable, as well as fees on foreign exchange transactions related to purchases and sales of securities. Such fees shall be paid from the assets of the respective Sub-Funds.

## 6.7 The Auditor

The Board has appointed Deloitte & Touche to be Auditor of the Company. The Auditor is a partnership established under Gibraltar law.

## 6.8 Fees

The Directors have determined that any liability which they do not consider to be attributable to any specific Sub-Fund shall be apportioned between Sub-Funds on a pro rata basis. The Directors from time to time may vary such basis of apportioning general expenses of the Company.

### **Investment Management Fee**

Each Sub-Fund will pay the Investment Manager, a management fee of 2% of AUM per annum, accrued weekly and payable monthly in arrears covering the cost of Investment Management and the provision of investment advice.

Each Sub-Fund will also pay the Investment Manager a performance related fee ("the Performance Fee"). The Performance Fee is payable in arrears at the end of each Performance Period. The Performance Period will comprise each 3 months period. The first Performance Period will run from the end of the Initial Subscription Period until 31 March 2007.

The Performance Fee is equivalent to 10 % of the increase in the Net Asset Value per share from the High Water Mark.

The use of High Water Mark ensures that shareholders are not charged a Performance Fee until any previous losses are recovered.

The High Water Mark is the greater of:

- (i) the initial issue price of EUR 100 for the Custodia European Sub-Fund, USD 100 for the Custodia North-American Sub-Fund and USD 100 for the Custodia Asian Sub-Fund, and;
- (ii) the highest Net Asset Value per share of the relevant Sub-Fund on the last day of any previous Performance Period.

The Performance Fee is calculated by reference to the Net Asset Value, after deduction of all liabilities and accrued fees or expenses, but before the deduction of any accrued Performance Fee.

The Performance Fee is accrued weekly and taken into account in the calculation of the Net Asset Value on each Valuation Date. In the event that a Shareholder redeems his shares before the end of a Performance Period, any accrued but unpaid Performance Fee in respect of such shares will be paid promptly to the Investment Manager. No equalisation factor will be applied to new subscriptions.

Neither the Company, the Members of the Board or, save as disclosed under section 12.3 "Conflict of Interest", the Investment Manager, shall receive any retrocession of fees charged to the Company or any Sub-Fund by any party, including banks or brokers.

### **Administration Fee**

Each Sub-Fund shall pay a fee to the Administrator of 0.15% per annum, accrued weekly and payable quarterly in arrears. The Administration fee for each Sub-Fund will be charged in accordance with the following scale :

AUM up to 50,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.15%
AUM from 50,000,000 to 100,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.10%
AUM above 100,000,000 EUR for each Sub-Fund (or equivalent in the Sub-Fund currency)	0.07%

The Company Secretary will be paid a fee of Euros Four Thousand Five Hundred (EUR 4,500) per annum, payable quarterly in arrears. The Administrator will be reimbursed by the Company for actual out-of-pocket expenses incurred on behalf of the Company.

### **Depositary's Fee**

Each Sub-Fund will pay the Depositary fees in an amount agreed between the Depositary and the Company. The safe-custody fees are currently 0.1% per annum of the weekly average value of the relevant Sub-Fund. The Company shall also pay the Depositary transaction fees which will be paid from the assets of the respective Sub-Funds.

### **Subscription Fees**

A subscription fee of up to 3% of the amount of the subscription received by the Sub-Fund may be charged by the Administrator on behalf of the Investment Manager and payable to the Investment Manager at time of subscription to the Sub-Fund. The Investment Manager shall have a discretion to pay all or any part of the said subscription fee to third parties. The subscription fee will be based on the value of, and added to the purchase price of, the Preference Shares. The Investment Manager shall have discretion to waive all or any part of subscription fee due to it from time to time and in such cases where the Investment Manager has made such a waiver, the Sub-Fund may also waive the subscription fee to the same extent.

### **Dealing Fee**

The Directors are entitled to levy a discretionary dealing charge of up to 0.25%, additional to the Subscription Fee described above, for subscriptions to and or redemptions from the Sub-Fund. The purpose of the dealing charge is to cover the transaction costs incurred by the investment or disinvestments.

For Subscriptions, the subscription price will include the dealing charge;

$$N = M_{sub} / (NAV * 1.0025)$$

N: number of shares  
M<sub>sub</sub>: subscription amount  
NAV: net asset value on the specific dealing day  
1.0025: increase price by 0.25%

For Redemptions, the redemption price will include the dealing charge;

$$M_{red} = N * (NAV * 0.9975)$$

N: number of shares  
M<sub>red</sub>: redemption amount  
NAV: net asset value on the specific dealing day  
0.9975: decrease price by 0.25%

### **Modification of fees**

In relation to the Company, special conditions apply if the Board wishes to increase the prevailing rate of any of the above fees. If the Board wishes to increase any of these fees from its present or agreed rate the Board will serve written notice on the Shareholders of the proposed increase. Any increase shall become effective at a specified date not earlier than 90 days after the date on which notice is served on the Shareholders.

### **Unforeseen Expenses**

All costs, claims, expenses, debts and liabilities of whatever nature which are not part of the normal day to day running of the Company, together with the expenses of any person engaged by the Board to assist it in the discharge of the Board's duties in relation to the Company apart from the expenses of normal day to day running may be chargeable to the Company. Such expenses could (without limitation) include legal or other professional advice and assistance in relation to any claims, new taxes, unforeseen events and contingencies affecting the Company or its property.

Investors should note that in accordance with company law, the assets and property in the Company and in the Sub-Funds are legally the property of the Company and may be subject to attack by any third party. In the event of the Company being unable to meet liabilities attributable to any particular Sub-Fund out of the assets attributable by such Sub-Fund, the excess liabilities may be met out of the assets attributable to the other Sub-Funds. The Board will apportion such excess liabilities pro rata according to the assets held by the other Sub-Funds.

## 7 NET ASSET VALUE

**Investors should be aware that as of this date it is not anticipated that a liquid or secondary market for trading in the Preference Shares will exist and that investment in the shares is only suitable for investors who are capable of bearing the economic risk of an investment in the Company.** The Preference Shares are not listed nor proposed to be listed on any securities exchange.

A Net Asset Value per share will be calculated for each Sub-Fund and shall be an amount equal to the value determined by the Directors in their absolute discretion as at the Valuation Date of all the assets of the Sub-Fund, less all the liabilities (actual, contingent and prospective so far as the same can be quantified) divided by the number of Preference Shares outstanding for that Sub-Fund.

Twice a year a consolidated Total Net Asset Value will be calculated for the Company for the purposes of the annual financial reports. This will include the total assets for the Company less the paid-in capital of the Founder Shares and the paid-in capital (if any) of the Nominal Shares, less all the liabilities (actual, contingent and prospective so far as the same can be quantified) and will be expressed in EUR.

Assets of the Sub-Funds shall be valued by the Directors

- a) at closing market price at the principal stock exchange where the assets are listed, quoted or dealt in a recognised stock exchange save that where the Directors in their absolute discretion consider that this basis of valuation is inapplicable or that the value determined thereby is unfair, they shall be entitled to substitute what in their opinion is a fair value therefore; and
- b) where the assets are not so listed, quoted or dealt in a recognised stock exchange, at a price the Directors in their opinion consider to be a fair value therefore;

**PROVIDED ALWAYS** that such determinations are made by the Directors in good faith.

Preference Shares for each Sub-Fund will be issued or redeemed at their Net Asset Value at the relevant Dealing Date. The Valuation Date and the Dealing Date are each Friday, if Business Days. If a Friday is not a Business Day, the Valuation Date and the Dealing Date shall be on the next Business Day.

Special situations affecting the measurement of the Net Asset Value for each Sub-Fund may arise. **Prospective investors should therefore understand that special situations (such as war, breakdown in communications, declarations of force majeure by governments or collapse of currencies or international payment mechanisms) involving uncertainties as to the valuation of the portfolio positions could have a significant impact on the Net Asset Value of each Sub-Fund.** Any valuations made pursuant to the Articles of Association shall be binding on all persons.

The NAV of each Sub-Fund will be certified by a Director or authorised delegate of the Company and such certificate shall be conclusive in the absence of manifest error.

Subscription Prices and Redemption Prices of Preference Shares based on the NAV of each Sub-Fund as at the last Dealing Date will be available on request from the Administrator.

## 8 SHARES OF THE COMPANY

### 8.1 Subscription of Preference Shares

The Directors of the Company shall from time to time at their discretion offer Preference Shares for subscription. During the Initial Subscription Period, Preference Shares for the following Sub-Funds will be available for subscription at the following prices;

EUR One Hundred (EUR 100) per Preference Share of the Custodia European Sub-Fund  
USD One Hundred (USD 100) per Preference Share of the Custodia North-American Sub-Fund  
USD One Hundred (USD 100) per Preference Share of the Custodia Asian Sub-Fund

Thereafter Preference Shares for each Sub-Fund will be available for subscription on each Dealing Date at a price per Preference Share equal to the Sub-Funds' NAV per Preference Share, plus the dealing fee, at close of business on the same date. The Subscription Price of each Sub-Fund is calculated on each Dealing Date by reference to that Sub-Funds' NAV and dividing this by the number of Preference Shares in issue or deemed to be in issue for that particular Sub-Fund.

The Company has power to issue fractional Preference Shares. A fractional Preference Share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

All applications for Preference Shares must be submitted by subscribers to the Administrator on the form specified in the Appendix.

Acceptance of subscriptions will be subject to:

- (a) receipt in Gibraltar, whether by fax, mail or electronic means of communication, by the Administrator of a duly completed Application Form, substantially in the form set out in the Appendix, by noon Central European Time at least one Business Day before a Dealing Date; and
- (b) receipt by the Depositary in the Company's bank account of cleared funds meeting the minimum Subscription requirement by the close of business in Gibraltar on the Dealing Date.

Payment of the subscription monies must be made in EUR for subscriptions into the Custodia European Sub-Fund, in USD for subscriptions into the Custodia North-American Sub-Fund and in USD for subscriptions into the Custodia Asian Sub-Fund; save that the directors may in their absolute discretion be entitled to accept payment of individual subscriptions in any other currency.

The minimum subscription by an Eligible Investor for initial investment in Preference Shares of the Company shall be Euros One Hundred Thousand (EUR 100,000) or the equivalent in USD. The Directors shall not accept any application for subscription for a lower amount. The minimum amount that can be allocated to any Sub-Fund is Euros Twenty Thousand (EUR 20,000) or the equivalent of that sum in USD. An existing investor may apply for further Preference Shares subject to a minimum further investment in the Company of Euros Twenty Thousand (EUR 20,000) or the equivalent of that sum in USD.

Subscriptions for Preference Shares of any Sub-Fund may be subject to payment of a Subscription Fee payable to the Investment Manager of up to 3%, calculated on the basis of, and deducted from the subscription amount received by the Sub-Fund, unless all or part of the subscription fee has been waived.

The Directors may in their discretion accept settlement of a subscription for Preference Shares of any Sub-Fund by a subscriber in assets other than cash. In such a case, the Directors shall value these assets on the same basis that other assets of the Sub-Funds are valued for the purpose of calculating the Net Asset Value.

All applicants must be Eligible Investors and are required to provide a declaration that they are not a US Person and that they are not a Resident of Gibraltar or Gibraltarian.

Contract notes will normally be issued within two business days of the Dealing Date in which Preference Shares are issued.

Where subscriptions for Preference Shares are received by fax or electronic means of communication, original signed instructions in the format shown in the Appendix must be received by the Administrator within 30 days.

Upon making an offer for the shares, the Subscriber must provide such information as the Administrator (acting on behalf of the Company and the Investment Manager) requires in order for it to carry out all due diligence and compliance procedures and must transfer **directly to the Depositary** the amount which he wishes to invest by interbank transfer in cleared funds. Upon receipt of the offer, and the provision of such further information as may be required, the Company and the Investment Manager, through the Administrator will carry out all due diligence and compliance procedures which it deems necessary. Upon satisfactory completion of all such procedures, the Company and the Investment Manager (through the Administrator) will, on the next Valuation Date, determine the number of entire Shares to which the Subscriber will be entitled.

Where subscription monies into a Sub-Fund after deduction of the Subscription Fee due, if applicable, are not an exact multiple of the Subscription Price per Preference Share of that Sub-Fund, upon issue of the Share, the Directors shall issue a fractional Preference Share in respect of the balance of the subscription monies received from an investor.

#### *Rejection of Offer to purchase Shares*

In the event an offer to purchase the Shares of a Sub-Fund is rejected, the Subscriber will be so notified by the Company as soon as reasonably and practically possible and the Depositary will return any monies to the Subscriber by interbank transfer to the nominated account of the Subscriber without interest and less any bank charges.

#### *Compliance with Money Laundering Regulations*

Without prejudice to the right of the Company through the Investment Manager and Administrator to carry out all due diligence and compliance procedures and request such further information as it sees fit in order to ensure compliance with the Gibraltar Anti-Money Laundering Regulations as are in force from time to time, in circumstances where an offer to purchase Shares is received from a Subscriber who tenders payment in the name of another or who appears to be acting in a representative capacity, the Company through the Investment Manager and Administrator, reserves the right to require the Subscriber to furnish such further information as may be required in order to establish the true and complete identity of the proposed Subscriber, and shall be entitled to refrain from processing the Application until it has received all such further information.

THE RIGHT IS RESERVED BY THE DIRECTORS TO REJECT ANY APPLICATION FOR PREFERENCE SHARES IN ANY SUB-FUND IN WHOLE OR IN PART WITHOUT ASSIGNING ANY REASON FOR THE REJECTION OF THE APPLICATION.

## 8.2 Redemption of Preference Shares

Preference Shares for all Sub-Funds may be redeemed on a Dealing Date. In order to redeem all or part of his holding of Preference Shares, a shareholder must deliver a Redemption Request specifying the number of shares to be redeemed, to the Administrator, Velay Financial Services Ltd. Suite 210, Neptune House, Marina Bay, Gibraltar, not later than noon Central European Time at least one Business Day before the Dealing Date on which redemption is to take place. A Redemption Request must be properly signed, and if faxed, the original Redemption Request must be sent as confirmation by Airmail or by courier.

The Preference Shares of each Sub-Fund will be redeemed at the Redemption Price per Preference Share of that Sub-Fund on the relevant Dealing Date, calculated in accordance with the method described in Section 7 of this Prospectus: the Redemption Price of the Sub-Fund is calculated on each Dealing Date by

reference to the NAV of its Preference Shares as at the close of business on the Dealing Date and multiplying this by the number of Preference Shares to be redeemed from the Sub-Fund. .

The minimum number of Preference Shares that may be redeemed from each Sub-Fund is that number the value of which, at the NAV of the Sub-Fund on the Valuation Date of the proposed redemption, is below but nearest to Euros Twenty Thousand (EUR 20,000), or the equivalent in USD. Other than where a Shareholder wishes to redeem his entire holding of Shares in a Sub-Fund, the Administrator on behalf the Company and the Investment Manager reserve the right to refuse to process a redemption request if following implementation of the redemption request, the Administrator believes that the shareholder would hold less than the minimum investment amount of Euros One Hundred Thousand (EUR 100,000), or the equivalent in USD, or would otherwise cease to be an Eligible Investor. If the Administrator on behalf of the Company and the Investment Manager refuse to process a redemption request on the above grounds, it will notify the Shareholder as soon as is reasonably practicable after receiving that request.

Save in the case of liquidation of the Sub-Fund, the Sub-Fund is not bound to redeem on any Dealing Date more than 25% of its Preference Shares. If the requests received exceed that limit, the requests may be reduced proportionately. Any request not redeemed in full on the first Dealing Date following its receipt by the Administrator will be carried forward for redemption to each succeeding Dealing Date until it has been complied with in full. Any request so carried forward will be complied with in priority to any requests received thereafter.

On redemption, all monies will normally be paid with value on or within five Business Days of the appropriate Dealing Date. In the event of payment not being made as aforesaid, the redemption proceeds will attract interest from the day payment was to be made up to but not including the date when payment is made, provided that the Directors are satisfied that there is no practical or legal impediment to the implementation of any payment instructions given, in which case no interest shall be paid. Redemption proceeds from the Custodia European Sub-Fund will be paid in Euros, those from the Custodia North-American Sub-Fund will be paid in USD and those from the Custodia Asian Sub-Fund will be paid in USD. A Redemption Request must indicate the bank account (Name, IBAN, Number and Bank Sort Code) to be credited as part of the instructions.

Where, as the result of a miscalculation of a Sub-Funds' Net Asset Value per Share, a Shareholder has received a payment or share in excess of the correct value, the Shareholder agrees, upon determination on behalf of the Company of that Net Asset Value, immediately to repay or surrender such excess value to the Company for the benefit of the Sub-Fund. In cases where excess shares have been issued as a result of such error the Shareholder authorises the Company to cancel or redeem such shares in order to correct such error and effect such repayment.

Upon redemption of a Share being effected, the Shareholder shall cease to be entitled to any rights in respect thereof and accordingly his name shall be removed from the Register of Shareholders with respect thereto and the Share be available for re-issue and allotment as an authorised Share and until re-issue and allotment shall form part of the authorised but unissued share capital of the Company.

Redemption of Preference Shares may also take place or be suspended in the circumstances mentioned below.

### 8.3 Suspension of Issues, Redemption and NAV Calculation

Subject to the prior approval of the Board and after consultation with the Investment Manager, the Administrator may suspend the calculation of the NAV, the issue of Preference Shares and the right of each shareholder to redeem Preference Shares (including the right to receive payment of the Redemption Proceeds) for any Sub-Fund:

1. during any period that the NAV cannot practicably be determined on an accurate and timely basis (e.g., when any securities exchange or organised interdealer market on which a significant portion of the Sub-Fund's assets is regularly quoted or traded is closed, other than for holidays, or trading thereon has been restricted or suspended, or market makers are unable to provide broker bids as to

securities that comprise a significant portion of the Sub-Fund's assets and are not traded on an exchange or market);

2. during any period when, as a result of exchange restrictions affecting the transfer of funds, transactions on behalf of the Sub-Fund are rendered impracticable or if purchases and sales of the Sub-Fund's assets cannot be effected at normal rates of exchanges;
3. during any period when, as a result of political, economic, military or monetary events or conditions or circumstances beyond the responsibility or control of the Company, disposal of the assets of the Sub-Fund or other transactions in the ordinary course of the Sub-Fund's business, involving the sale, transfer, delivery or withdrawal of securities is not reasonably practicable without being detrimental to the interests of shareholders;
4. it is not reasonably practicable to determine the value of the Shares of the Sub-Fund on an accurate and timely basis;
5. where the disposal of part or all Sub-Fund's assets to meet such redemption requests would be prejudicial to the non-redeeming members;
6. upon the decision to liquidate and dissolve the Company.

In the event of any such suspension, the Company may withhold payment to any person who has tendered a redemption request until after the suspension has been lifted. Notice of suspension will be given to any shareholder that has tendered a redemption request and, unless the redemption request is withdrawn, the redemption will be completed on the next Dealing Date on which the calculation of Net Asset Value is resumed.

## 8.4 Compulsory Redemption

Preference Shares for any Sub-Funds will be compulsorily redeemed or transferred if it comes to the notice of the Board that (inter alia) those Preference Shares are owned directly or indirectly by a person who is ineligible as a Shareholder for any reason or any US Person or Resident of Gibraltar or Gibraltarian or are being held in breach of any law or requirement of any country or governmental authority or by any person who is not qualified to hold such Preference Shares by virtue of such law or requirement or if ownership of those Preference Shares by any person might, in the opinion of the Companies' legal advisers, subject the Company to adverse tax or regulatory consequences.

Any such compulsory redemption will be made at the appropriate value per Share of the Sub-Fund on the Dealing Date next following issuance of a notice of redemption to the Shareholder. Where the Directors exercise their rights of compulsory redemption, the Directors may deduct from the proceeds of redemption an amount representing the extra cost to the Sub-Fund and to the Depositary of administering the compulsory redemption.

The Company has the right to redeem all outstanding Preference Shares of any Sub-Fund if at any time the NAV of that Sub-Fund on each Dealing Date for 4 consecutive weeks is less than Euros Five Hundred Thousand (EUR 500,000) or the equivalent in USD.

The Company also has the right to redeem all outstanding Preference Shares if at any time the aggregate Net Asset Value of the Company on each Dealing Date for 4 consecutive weeks is less than Euros Two Million (EUR 2,000,000).

## 8.5 Conversion of Shares

Holders of Shares in a Sub-Fund will be entitled to convert some or all of their holding into Shares of another Sub-Fund as long as all the conditions to subscribe to Shares in the new Sub-Fund are met. The

Shares may be converted on each Dealing Date subject to receipt in Gibraltar, whether by fax or electronic means of communication, by the Administrator of an instruction including the following information: the name of the Shareholder, the name of the Sub-Fund from which the shares are to be converted and the number of shares to be allocated to the new Sub-Fund.

The number of Preference Shares of the new Sub-Fund to be allotted and issued on conversion shall be determined by the Directors as nearly as possible in accordance with the following formula:-

$$\text{NPS} = \frac{\text{OPS} \times \text{RP} \times \text{CCR}}{\text{SP}}$$

where	NPS	is the number of Preference Shares of the new Sub-Fund
	OPS	is the number of Preference Shares of the original Sub-Fund comprised in the Conversion Notice
	RP	is the Redemption Price of a Preference Share of the original Sub-Fund calculated in accordance with Section 7 hereof on the relevant Dealing Date
	CCR	is the currency conversion rate determined by the Directors as being the appropriate conversion rate applicable on the relevant Dealing Date to the currencies in which the Preference Shares of the original Sub-Fund and the new Sub-Fund are respectively denominated
	SP	is the Subscription Price of a Preference Share of the new Sub-Fund calculated in accordance with Section 7 hereof on the relevant Dealing Date

On the relevant Dealing Date the Company shall debit the original Sub-Fund with an amount equal to

$$\text{OPS} \times \text{RP}$$

and shall credit the new Sub-Fund with the appropriate amount in the currency in which the new class is designated.

The Company may refuse to comply with any conversion request that would relate to less than Euros Twenty Thousand (EUR 20,000) or the equivalent in USD, at the discretion of the Directors.

## 8.6 Transfer of Shares

The Articles provide that shares of any Sub-Fund will be transferable by instrument in writing in any usual or common form or in such other form as the Directors shall approve, executed by the transferor and the transferee. Any shareholder wishing to transfer Shares will be required to provide, in respect of the proposed transferee, the same information which would be required in connection with a direct subscription in order for a transfer application to be considered by the Company through the Investment Manager and Administrator, who will be entitled to request further information as in the case of an application for Shares.

Violation of applicable ownership and transfer restrictions may at the discretion of the Directors and the Investment Manager result in compulsory redemption of the relevant Share.

In the event that the Company through the Investment Manager and Administrator is not satisfied with the information initially or subsequently provided, the Shareholder will be notified that the Company will not accept the proposed transferee as a Shareholder and will not register any proposed transfer.

In the case of death a person becoming entitled to a share may be registered as a Shareholder or may instead elect to have some person named by him registered as transferee. In the case of the death of one

or more joint holders of a share the survivor or survivors shall be the only person or persons recognised by the Company as having any title to the shares registered in the names of such joint shareholders.

The Shares may not be transferred to any Gibraltar resident or Gibraltarian, or resident of any jurisdiction which prohibits the holding of shares in the Company.

*Duty to give information*

A person who becomes aware that he is not an Eligible Investor or is otherwise ineligible as a Shareholder for any reason or where by reason of the Shareholding the status, standing or tax residence of the Company is or may be prejudiced or the Company is or may be prejudiced or may suffer any pecuniary disadvantage which it would not otherwise have suffered shall forthwith give notice to the Directors. A typical ground of ineligibility would be the residence or domicile of that person in, or his citizenship of, a country or territory in which it is unlawful for Shares to be promoted (whether generally or to that particular person).

The Directors may at any time and from time to time call upon any shareholder to provide the Directors with such information and evidence as they shall require upon any matter connected with or in relation to any Shareholding and the Shareholder shall within the time specified provide such information.

There are no pre-emption rights attached to the Preference Shares of the Sub-Funds.

## 9 SHARE CAPITAL

A share is a division of the Company's capital. The holder of that share may be entitled to participate in the property and the income of the Company that it represents, in proportion to that value of that share in accordance with the rights reserved in the Company's Articles of Association.

The Company was incorporated with an authorised share capital of One hundred and twenty thousand Euros, Two hundred and fifty thousand US Dollars and One hundred and fifty thousand Swiss Francs divided into:-

- (i) 200 Founder Shares of 100 Euros each;
- (ii) 5,000,000 European Redeemable Preference Shares of 0.01 Euro each;
- (iii) 5,000,000 European Nominal Shares of 0.01 Euro each;
- (iv) 6,250,000 North American Redeemable Preference Shares of 0.01 US Dollar each;
- (v) 6,250,000 North American Nominal Shares of 0.01 US Dollar each;
- (vi) 7,500,000 Swiss Redeemable Preference Shares of 0.01 Swiss Franc each;
- (vii) 7,500,000 Swiss Nominal Shares of 0.01 Swiss Franc each;
- (viii) 6,250,000 Asian Redeemable Preference Shares of 0.01 USD each; and
- (ix) 6,250,000 Asian Nominal Shares of 0.01 USD each.

No shares in the capital of the Company shall be issued other than Founder Shares, Preference Shares or Nominal Shares. The Directors have authority to allot the Shares.

The authorised and issued share capital of the Company following the issue of the Founder and Preference Shares in the Company is set out below.

Share Type	Sub-Fund	Authorised		Issued and fully paid	
		EUR	No. of Shares	EUR	No. of Shares
Founder Shares	N/A	20,000 EUR	200	20,000 EUR	200
Nominal Shares	European	50,000 EUR	5,000,000	To be issued only for redemption of preference shares in the same currency	
	North American	62,500 USD	6,250,000		
	Swiss	75,000 CHF	7,500,000		
	Asian	62,500 USD	6,250,000		
Preference Shares	European	50,000 EUR	5,000,000	To be issued on application	
	North American	62,500 USD	6,250,000		
	Swiss	75,000 CHF	7,500,000		
	Asian	62,500 USD	6,250,000		

The Shares have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act") and the Company has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act"). Consequently, the Shares may not

be offered, sold, resold, delivered or transferred within the United States or to, or for the account or benefit of, U.S. persons.

Since incorporation no capital of the Company has been allotted for a consideration other than cash.

The Company has power to issue fractional Preference Shares and fractional Nominal Shares. A fractional Preference Share and fractional Nominal Share shall have the corresponding fractional rights, obligations and liabilities of a whole share of the same class or series of shares.

The Register of Shareholders may be inspected during office hours on any Business Day at the offices of the Administrator at Suite 210, Neptune House Marina Bay, Gibraltar.

## 9.1 Types of Shares

### **Founder Shares**

The Founder shares are Ordinary shares, and exist to comply with Gibraltar law, which requires that preference shares have a preference over another class of capital. In addition, a public limited company is required under Gibraltar law to have at least 7 shareholders. The Founder Shares have a nominal value of EUR 100, each with voting rights but not entitled to participate in any profit or distribution of the Company (except the repayment of the amount paid up on the Founder Shares).

### **List of Founder Shareholders**

Custodia Finance Limited has subscribed 194 Founder Shares, fully paid up, upon incorporation of the Company, and James E. Fisher, J. Mark Fisher, Jurg Kocher, Georgios Tsitos, Raymond Joubaud and Millennium Nominees Limited have each subscribed one Founder Share, fully paid up upon incorporation of the Company.

The holders of the Founder Shares are entitled to receive notice of General Meetings and to attend and vote thereat. On a poll a holder of Founder Shares is entitled to one vote for each share held by him. Founder Shares carry no right to a dividend. Founder Shares are not redeemable. In a winding up, a Founder Share is entitled only to a return of paid-up capital after the return of capital on the Preference Shares.

### **Preference Shares**

The holders of the Preference Shares are not entitled to vote but shall have exclusive right to participate in the profits and the surplus upon liquidation of the Company.

The Directors are authorised by the Articles to issue Preference Shares in the capital of the Company.

Preference Shares for each Sub-Fund carry a right to dividends (if any) declared by such Sub-Fund. Preference Shares carry no voting rights. In a winding up, each Preference Share has a preferential right to return of paid-up capital, and after return of paid-up capital on Founder Shares, a right to share in the surplus assets of the Sub-Fund.

The rights attached to the Preference Shares may (whether or not the Company is being wound-up) be varied only with the unanimous consent in writing of all Preference Shareholders.

### **Nominal Shares**

The Nominal Shares exist solely for the purpose of providing funds for the redemption of the Preference Shares and shall only be issued at par. The holders of the Nominal Shares are not entitled to vote and have no right to participate in the profits or surplus upon liquidation of the Company (except for the repayment of the amount paid up on the Nominal Shares). The Nominal Shares shall only be issued to the holders of the Founder Shares.

## 9.2 Alterations to Share Capital

The Company may from time to time, by Special Resolution, increase its capital by such sum to be divided into shares of such amounts, as the resolution shall prescribe. The Company may also by Special Resolution from time to time reduce its Share Capital.

The Company may by Special Resolution, from time to time, alter its capital by consolidating or dividing its share capital into shares of a larger amount than its existing shares, by sub-dividing its shares into shares of smaller amounts than that fixed by the Memorandum of Association, or by cancelling any shares which, at the date of the Special Resolution, have not been taken or agreed to be taken by any person and diminishing the amount of its share capital by the amount of the shares so cancelled.

## 10 TAXATION

### 10.1 The Company

The Company shall apply to the Commissioner of Income Tax for the exercise of the powers vested in him in Rule 3 of the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 to exempt from income tax the investment income of the Company.

Prospective purchasers should, however, note that the legislation on taxation in Gibraltar may change at some time in future. It is possible, but by no means certain, that in future funds in Gibraltar will continue to benefit from an attractive tax regime as at present. **However, there is no assurance that the Government of Gibraltar may not amend the tax system to the detriment of companies like the Company.**

There can be no assurance that the Company will maintain its tax-free status. In the event that this status is revoked the Directors will either take all reasonable steps to relocate the domicile of the Company to preserve the tax-free status or retain the Company's Gibraltar domicile and upon legal and accountancy advice take such other steps which may lawfully and properly mitigate any tax burden falling upon the Company.

Under current legislation payments made on the redemption of any Preference Shares may be made without deduction of any withholding taxes to shareholders not resident in Gibraltar for Gibraltar income tax purposes.

No death duties, capital gains tax, gift, inheritance or capital transfer taxes are presently levied in Gibraltar. No stamp duty is currently levied in Gibraltar on the transfer or redemption of Preference Shares.

The Company has paid a capital duty of GBP 10.00 on the par value of the share capital of the Company, the costs of which form part of the establishment expenses which have been borne by the Company.

### 10.2 Shareholders

All persons interested in purchasing Preference Shares bear the responsibility of informing themselves of any income tax or other tax consequences relevant to their particular circumstances in connection with the subscription, holding or redemption of Preference Shares or the receipt of dividends, if any, paid thereon. Prospective investors are not to construe the contents of this Prospectus or any as may be issued from time to time or any prior or subsequent communications from the Company or any of its Directors, officers or agents as legal or tax advice.

**INVESTORS IN ANY JURISDICTION SHOULD CONSULT THEIR PROFESSIONAL ADVISERS ON THE POTENTIAL TAX, EXCHANGE CONTROL AND OTHER CONSEQUENCES UNDER THE LAWS OF THEIR COUNTRY OF CITIZENSHIP, DOMICILE OR RESIDENCE.**

## 11 MEMORANDUM & ARTICLES OF ASSOCIATION

The Memorandum of Association sets out the principal object of the Company which is to carry on business as an open-ended public investment company and for such purpose to hold investments as therein authorised.

The following section includes a summary of principal provisions of the Articles of the Company. Defined terms in the section bear the same meanings as defined in the Articles.

### 11.1 Status of the Company

The Company is an open-ended public investment company within the meaning of Section 4 of the Financial Services (Collective Investment Schemes) Ordinance 2005 incorporated with limited liability in Gibraltar on the 17th day of November 2006 and shall be operated as a collective investment scheme. The Company is established as an Experienced Investor Fund pursuant to the EIF Regulations.

### 11.2 Meetings and Reports

Registered holders of Preference Shares are entitled to attend general meetings of the Company. The Annual General Meeting will be held in Gibraltar within four months after the end of the financial year. Other general meetings may be held at such time and place in Gibraltar as the Directors may determine.

The first financial period of the Company will be 30th June 2007. Subsequent financial years will end on 30th June in each year. Copies of the annual report containing the audited financial statements of the Company in respect of the preceding financial year will be sent to the registered address of each shareholder at least 21 days prior to the Annual General Meeting and within four months after the end of the preceding financial year. Copies of the unaudited half-yearly report as of 31st December each year will be sent to shareholders within 4 months of the end of the period.

The annual report of the Company will contain the following information:

- a) A balance sheet;
- b) A profit and loss account;
- c) A copy of the report of the Auditor on the above-mentioned accounts including any qualifications made by the Auditor;
- d) A report by the Investment Manager on the activities of the Company during the financial year;
- e) A copy of the report by the Company to the Shareholders as to the manner in which the Company has been managed during the financial year.

Copies of all financial reports and other published information concerning the Company are available on request from the Administrator in Gibraltar:

Velay Financial Services Limited  
Telephone: +350 51431  
Fax number: +350 51429  
Email: info@vfs.gi

### 11.3 Borrowing

At the date hereof the Company does not have outstanding any debentures, loan capital (including loan capital created but un-issued), borrowings or indebtedness in the nature of borrowings, including bank overdrafts and liabilities under acceptances or acceptance credits, mortgages, charges, hire purchase commitments, borrowings of securities, guarantees or other material contingent liabilities. No Sub-Fund is authorised to borrow money or securities in excess of 10% of the value of assets in the Sub-Fund.

### 11.4 Indemnities

The Articles of Association contain provisions indemnifying the Directors, Secretary and other officers and servants of the Company against all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into or thing done by him as an officer or servant or in any way in discharge of his duties, including travelling expenses, otherwise than through his own gross negligence, wilful neglect or wilful default. The Articles of Association further provides that the Directors shall be liable for any acts, receipts, neglects or defaults only if the same happens from failure to exercise due care and diligence in discharge of their functions. The amount for which such indemnity is provided will attach as a lien on the property of the Company and have priority as between the shareholders over all other claims. In addition, each of the Depositary Agreement, the Administration Agreement and the Investment Management Agreement may provide that the Depositary, the Administrator and the Investment Manager will be indemnified against loss or damage suffered by them in the discharge of their duties under such agreements otherwise than through their own gross negligence, wilful neglect or wilful default.

### 11.5 Director's Remuneration, Service Agreements and Interests

- (a) Directors will be remunerated by the Company for their services. Directors shall be reimbursed for documented expenses incurred in connection with the business of the Company. Individual Directors may, if the Board of Directors expressly so determines, receive remuneration for special services to or at the request of the Company. In particular, Directors may earn part of the subscription fee as compensation for having introduced investors to invest in the Company. The aggregate documented expenses plus remuneration of the Directors will be disclosed in the Company's annual audited accounts.
- (b) There are as of the date of this Prospectus no service agreements in existence between the Company and its Directors.
- (c) Save as disclosed under "Conflict of Interest", no Directors of the Company have any interest, direct or indirect, in any assets which have been or are proposed to be acquired or disposed of by, or leased to, the Company since the date of incorporation of the Company, and no Director of the Company has a material interest in any contract or arrangement entered into by the Company which is significant in relation to the business of the Company.
- (d) A Director may act in a professional capacity for the Company (other than as Auditor) and may receive remuneration for such professional services as may be expressly approved by the Board of Directors in accordance with Section (a) above. A Director may also be a director, officer or member of any company in which the Company may be interested.

- (e) A Director may contract with the Company. No contract or arrangement made by the Company in which any Director is in any way interested shall be liable to be voided, but the nature of his interest must be declared and minuted at a meeting of the Directors.
- (f) A Director may not vote in respect of any contract in which he is materially interested.
- (g) There is no share qualification nor fixed retirement age for Directors.
- (h) A Director may be removed at any time by extraordinary resolution of the Company in general meeting.

## 11.6 Termination

The Articles contain provisions that upon winding up, the Liquidator shall apply the assets of the Company in satisfaction of creditors' claims. Thereafter the assets available for distribution among members shall be applied in the following priority:

- (a) repayment pari passu to holders of Preference Shares of the nominal amount paid thereon;
- (a) repayment pari passu to holders of the Nominal Shares of the nominal amount paid thereon;
- (b) repayment pari passu to holders of Founder Shares of the nominal amount paid thereon;
- (d) repayment to holders of Preference Shares in Sub-Funds of any surplus assets then remaining in the respective Sub-Funds in proportion to their respective holdings in the Sub-Funds.

## 12 GENERAL INFORMATION

### 12.1 Material Contracts

The following contracts entered into since the incorporation of the Company otherwise than in the ordinary course of business and prior to the date of this Prospectus and are or may be material:

#### *Investment Manager*

The duties, responsibilities, compensation, rights and obligations in the Investment Management Agreement dated the 20th day of February 2007, entered into between the Company and Custodia Finance Limited. The agreement will come into force on 1<sup>st</sup> day of April 2007 upon termination of the initial Investment Management Agreement between the Company and Armor Portfolio Management Limited. This agreement shall be terminable by the Company or by Custodia Finance Limited upon written notice by either party.

#### *Administrator and Company Secretary*

Administration and Company Secretarial Agreement dated the 20th day of November 2006, entered into between the Company and Velay Financial Services Limited. The Agreement is terminable by the Company or by Velay Financial Services Limited upon twelve month's notice.

#### *Depositary*

Depositary Agreement dated the 21st day of November 2006, entered into between the Company and Credit Suisse (Gibraltar) Limited. The Agreement is terminable by the Company or the Depositary on ninety days' notice. In the event of the appointment of the Depositary terminating under the terms of the Depositary Agreement the Directors shall use all reasonable endeavours to find a new Depositary.

### 12.2 Documents available for Inspection

Copies of the following documents will be available for inspection at the registered office of the Company in Gibraltar during usual business hours (Saturdays, Sundays and public holidays excepted):

- a) the material contracts referred to in paragraph 12.1;
- b) the Memorandum and Articles of Association of the Company and of the Investment Manager and of the Administrator;
- c) the Companies Ordinance under which the Company was incorporated, the Financial Services (Collective Investment Schemes) Ordinance 2005 and the Regulations made thereunder and the EIF Regulations;
- d) Income Tax Ordinance under which the investment income of the Company has been exempted from tax;
- e) the report and consent of Deloitte & Touche.

### 12.3 Conflicts of Interest

It is hereby disclosed that Raymond Joubaud and Joanne Sené, Directors of the Company, have a beneficial interest in or are a director of Velay Financial Services Limited and/or Custodia Finance Limited.

It is hereby disclosed that Georgios Tsitos, a Director of the Company, is a Director of Custodia Finance Limited.

Subject to any restrictions set out herein, the Directors shall be eligible to investment in the Company.

## 12.4 Directors and other Interests

No Director:

- (i) has any unspent convictions in relation to indictable offences; or
- (ii) has been bankrupt or the subject of an individual voluntary arrangement, or has had a receiver appointed to any asset of such Director; or
- (iii) has been a director of any company which, while he was a director or within 12 months after he ceased to be a director, had a receiver appointed or went into compulsory liquidation, creditors' voluntary liquidation, administration or company voluntary arrangement, or made any composition or arrangement with its creditors generally or with any class of its creditors; or
- (iv) has been a partner of any partnership which, while he was a partner or within 12 months after he ceased to be a partner, went into compulsory liquidation, administration or partnership voluntary arrangement, or had a receiver appointed to any partnership asset; or
- (v) has had any public criticism by statutory or regulatory authorities (including recognised professional bodies); or
- (vi) has been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company.
- (vii) **In the conduct of the Company business, conflicts of interest may arise.** Prospective investors should be aware of such potential conflicts of interest. In particular, investors should note that the Directors may have significant business activities unrelated to the Company and that they allocate to the business of the Company only such time as they deem appropriate.

## 12.5 Gibraltar Legal Requirements and Money Laundering

As part of the Company's responsibility for the prevention of money laundering under the Criminal Justice Ordinance, 1995 and the Drug Trafficking Offences Ordinance, 1995, the Company will require a detailed verification of an investor's identity.

An individual investor must produce such verification as the Company requires, which may include two forms of photographic ID (for example, certified copies of a passport and/or identification card), and two forms of proof of residence (for example, certified copies of utility bills, not more than three months old). Each individual investor may be required to produce a letter of reference from a professional (banker, lawyer or accountant) in the form set out in the Appendix.

Corporate applicants (except for companies listed on a recognized exchange) must produce such verification as the Company requires which may include a certified copy of the certificate of incorporation, memorandum and articles of association (or equivalent), together with a disclosure letter, a draft of which is included in the Appendix. All individuals who are beneficial owners of such corporate applicant must produce such verification as the Company requires, which may include two forms of photographic ID (for example, certified copies of a passport and/or identification card), and two forms of proof of residence (for example, certified copies of utility bills, not more than three months old). Each such beneficial owner may also be required to produce a letter of reference from a professional (banker, lawyer or accountant) in the form set out in the Appendix.

Trusts (except for registered charities) must produce such verification as the Company requires, which may include in respect of any individual who is trustee, named beneficiary/object or settlor, two forms of photographic ID (for example, certified copies of a passport and/or identification card), and two forms of proof of residence (for example, certified copies of utility bills, not more than three months old) and a letter of reference from a professional (banker, lawyer or accountant) in the form set out in the Appendix.

Trusts (except for registered charities) may be required to produce the documents required of a corporate applicant in respect of any company (except for companies listed on a recognized exchange) that is trustee, named beneficiary/object or settlor.

The Company generally reserves the right to request such information as it considers necessary to verify the identity of an applicant and the source of any funds. In the event of delay or failure by the applicant to produce any information required for verification purposes, the Company may refuse to accept the application and the subscription monies relating thereto.

The Company, the Investment Manager and the Administrator may record telephone conversations between them and Shareholders and applicants for Shares and their agents for the purpose of evidencing information, monitoring quality of service, or otherwise for the Company's internal records.

The Company will also record telephone conversations where obliged to by applicable law or regulations. Such recording may take place without the use of a warning tone.

## 12.6 Governing Law

The Company is governed by the law of Gibraltar, all contracts with Shareholders shall be subject to the law of Gibraltar and the competent court in Gibraltar shall have exclusive jurisdiction in relation to any contract with any Shareholder or claim by any Shareholder of whatsoever nature against the Company, its Board of Directors, the Investment Manager, its board of directors, and the Administrator and for these purposes every Shareholder and every other party above named irrevocably submits to the exclusive jurisdiction of Gibraltar Courts.

The legal system in Gibraltar is based on English common law as supplemented by local statute and case law. The final court of appeal is the Privy Council in London. Certain matters may be adjudicated in the European Court of Justice. Gibraltar is a member of the European Union ("EU") by virtue of UK membership (although it is exempted from the Common Agricultural Policy and from VAT).

## 12.7 Miscellaneous

- a) The Company has not established a place of business outside Gibraltar and does not presently have any subsidiaries.
- b) The expenses incurred in the formation of the Company are estimated to amount to not more than EUR Twenty Thousand (EUR 20,000).
- c) No share or loan capital of the Company is under option or agreed to be put under option conditionally or unconditionally and, save as disclosed herein, no commission, discounts, brokerage, or other special terms have been granted by the Company within two years immediately preceding the date of this Prospectus in connection with the issue or sale of any share or loan capital of the Company.
- d) The Company is responsible for all normal operating expenses including audit fees, stamp duties and charges incurred on the acquisition and realisation of investments and fees payable to the Investment Manager, the Administrator, and the Depositary.

- e) No share or loan capital of the Company has been issued within the two years immediately preceding the date of this Prospectus or is now proposed to be issued, fully or partly paid, either for cash or for a consideration other than cash, other than in accordance with this Prospectus.
- f) The Company has not purchased or acquired or agreed to purchase or acquire any property.
- g) Save as disclosed in Section 6 and Section 11.5, no amount or benefit has been paid or given (or is intended to be paid or given) to any person.
- h) No litigation or claims of material importance are pending or threatened against the Company.
- i) The Directors have given and have not withdrawn their written consent to the issue of this Prospectus with the inclusion therein of their report and references to their name in the form and context in which it appears.
- j) The financial statements of the Company shall be prepared in accordance with International Financial Reporting Standards.
- k) The Company may establish up to three wholly owned subsidiaries of the Company to take the benefit of double-taxation agreements existing between the country of domicile of investor companies and the country in which the Company subsidiary is established. Any such Company subsidiaries will be subject to the same control and reporting procedures as apply to the Company itself, with all cash and all securities to be held by the Depositary Bank and its Sub-Depositaries. The cash and securities holdings of any such Company subsidiaries will be fully reported in the Company's unaudited accounts, as well as in the annual audited accounts of the Company, along with and in the same manner as the cash and securities of the Company itself.
- l) Changes to the Memorandum and Articles of Association of the Company may be made in accordance with the provisions of the Companies Ordinance. These require an Ordinary, Extraordinary or Special Resolution of the Company in general meeting depending on the nature of the change to be effected. If the Board wishes to change in a material manner the contents of this Prospectus, the Board will serve written notice on the Shareholders of the proposed change. Any change shall become effective at a specified date not earlier than 90 days after the date on which notice is served on the Shareholders.

## 12.8 Auditors Report

“The Directors  
Custodia Fund Public Limited Company  
Suite 210 Neptune House  
Marina Bay  
Gibraltar

Dear Sirs,

The Company was incorporated in Gibraltar on the 17th day of November 2006.

The first audited accounts will be as at 30th June 2007, covering the operations of the company from inception to 30th June 2007.

Deloitte & Touche have agreed to be the Company’s Auditors, and to perform an Audit as at 30th June 2007.

Yours faithfully

Deloitte & Touche”

This Prospectus is dated the 1st day of April 2007.

Signed: .....

**Raymond Joubaud**  
Director

.....

**Joanne Sené**  
Director

.....

**Georgios Tsitos**  
Director