

Collective Investment Schemes

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COLL Appendix **KII Regulation**

Appendix 1UK **KII Regulation**

COLL Appendix 2 **Modifications to the KII Regulation for KII-compliant NURS**

Appendix 2 **Modifications to the KII Regulation for KII-compliant NURS**

Transitional provisions and Schedules

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Chapter 1

Introduction

1.1 Applications and purpose

Application

- 1.1.1 **G** (1) This sourcebook, except for **■** COLL 9 (Recognised schemes), applies to:
- (a) *investment companies with variable capital (ICVCs);*
 - (b) *ACDs, other directors and depositaries of ICVCs;*
 - (c) *managers and trustees of authorised unit trust schemes (AUTs);*
and
 - (cA) *authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACSs).*
 - (d) [deleted]
- (2) **■** COLL 9 applies to *operators of schemes that are recognised schemes* and to those seeking to secure recognised status for such *schemes*.
- (3) **■** COLL 11.5 (Auditors) also applies to auditors of *master UCITS* and *feeder UCITS* which are *UCITS schemes*.
- (4) [deleted]
- (5) **■** COLL TP 1.1(48) contains transitional provisions that apply in relation to any *scheme* that will need to become a *regulated money market fund* in accordance with the *Money Market Funds Regulation*, and which operates as a *scheme* prior to 21 July 2018.

1.1.1A **R** [deleted]

1.1.1B **R** [deleted]

1.1.1C **G** [deleted]

Purpose

- 1.1.2 **G** (1) The general purpose of this sourcebook is to contribute to the *FCA* meeting its *statutory objectives* of the protection of *consumers*. It provides a regime of product regulation for *authorised funds*, which sets appropriate standards of protection for investors by specifying a number of features of those products and how they are to be operated.

(2) In addition, this sourcebook implemented part of the requirements of the *UCITS Directive* relevant to *authorised funds and management companies*, along with other requirements implemented in other parts of the *Handbook*.

UCITS management company and product passport

1.1.2A **G** [deleted]

The Collective Investment Schemes Information Guide

1.1.3 **G** The Collective Investment Schemes Information Guide *COLLG* provides some general background material on the regulatory structure surrounding *scheme* regulation in the *UK*.

1.2 Types of authorised fund

Types of authorised fund

1.2.1 **R** An application for an *authorisation order* must propose that the *scheme* be one of the following types:

- (1) a *UCITS scheme*;
- (2) a *non-UCITS retail scheme*, including:
 - (a) a *non-UCITS retail scheme* operating as a *fund of alternative investment funds (FAIF)*; and
 - (b) a *non-UCITS retail scheme* which is an *umbrella* with *sub-funds* operating as:
 - (i) *FAIFs*;
 - (ii) *standard non-UCITS retail schemes*; or
 - (iii) a mixture of (i) and (ii);
- (3) a *qualified investor scheme*; or
- (4) a *long-term asset fund*.

Umbrella schemes

1.2.1A **G** Any *authorised fund*, except for an *ACS* that is a *limited partnership scheme*, may be structured as an *umbrella* with separate *sub-funds*.

[**Note:** article 1(2) second paragraph of the *UCITS Directive*]

Types of authorised fund - explanation

- 1.2.2 **G**
- (1) *UCITS schemes* must in particular comply with:
 - (a) ■ COLL 3.2.8 R (*UCITS obligations*); and
 - (b) the investment and borrowing powers rules for *UCITS schemes* set out in ■ COLL 5.2 to ■ COLL 5.5.
 - (2)
 - (a) *Non-UCITS retail schemes* are *schemes* that do not comply with all the conditions necessary to be a *UCITS scheme*.
 - (b) A *non-UCITS retail scheme* is an *AIF* and must be managed by an *AIFM*.
 - (c) The *UK* may, under the legislation which implemented article 43 of *AIFMD*, impose stricter requirements on

an AIFM or an AIF marketed to retail clients than the requirements that apply to an AIF marketed only to professional clients.

- (d) This sourcebook contains the stricter requirements for an AIF which is a *non-UCITS retail scheme*.
 - (e) A *full-scope UK AIFM* must also comply with the requirements in *FUND* and any other applicable provisions of *AIFMD*.
 - (f) *Non-UCITS retail schemes* could become *UCITS schemes*, provided they are changed, so as to comply with the necessary conditions.
 - (g) *Non-UCITS retail schemes* operating as *FAIFs* have wider powers to invest in *collective investment schemes* than other *non-UCITS retail schemes*.
- (2A) A *non-UCITS retail scheme* may also be structured as an *umbrella* with *sub-funds* operating as:
- (a) *FAIFs*;
 - (b) standard *non-UCITS retail schemes*; or
 - (c) a mixture of (a) and (b).

In these cases, *rules* relating to investment powers and borrowing limits apply to each *sub-fund* as they would to a *scheme*.

- (3) (a) *Qualified investor schemes* may be promoted only to:
- (i) *professional clients*; and
 - (ii) *retail clients* who are sophisticated investors, on the same terms as *non-mainstream pooled investments* (see ■ COBS 4.12B (Promotion of non-mass market investments)).
- (b) A *qualified investor scheme* is an AIF and must be managed by an AIFM.
- (c) [deleted]
- (d) This sourcebook contains the stricter requirements for an AIF which is a *qualified investor scheme*.
- (e) A *full-scope UK AIFM* must also comply with the requirements in *FUND* and any other applicable provisions of *AIFMD*.
- (f) *Qualified investor schemes* could change to become *non-UCITS retail schemes* or *UCITS schemes*.
- (3A) (a) A *long-term asset fund* may be promoted only to:
- (i) *professional clients*; and
 - (ii) *retail clients* who are sophisticated investors, *certified high net worth investors*, and those other *retail clients* to whom *units* in *long-term asset funds* can be promoted without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments).
- (b) A *long-term asset fund* is an AIF and must be managed by a *full-scope UK AIFM* (see ■ COLL 15.2.2R (Authorised fund manager to be a full-scope UK AIFM)).

- (c) Under the *Act* and the *UK AIFM regime*, the *FCA* is able to impose stricter requirements on an *AIFM* or an *AIF* marketed to *retail clients* than the requirements that apply to an *AIF* marketed only to *professional clients*. This sourcebook contains stricter requirements for an *AIF* which is a *long-term asset fund*.
- (d) A *full-scope UK AIFM* must also comply with the requirements in *FUND* and any other applicable provisions of the *UK AIFM regime*.
- (e) A *long-term asset fund* could change to become a *qualified investor scheme*, a *non-UCITS retail scheme* or a *UCITS scheme*, provided it complies with the necessary conditions. The *authorised fund manager* of an *LTAF* may need to make significant changes to the *LTAF's* constitution, objectives and investment powers for it to become a *UCITS scheme* or a *non-UCITS retail scheme*.
- (f) A *qualified investor scheme* could become authorised as a *long-term asset fund* if the *authorised fund manager* operates, or proposes to operate, the *scheme* in accordance with the *rules* in ■ COLL 15 (Long-term asset funds).
- (g) The nature of the assets that are held (or expected to be held) by a *long-term asset fund* means that it will not be able to seek authorisation as a *regulated money market fund*, or to have the characteristics of such a *fund* without significant changes to its constitution, objectives and investment powers. See also article 6 of the *Money Market Funds Regulation*.

(4) The changes referred to in (2), (3) and (3A) require approval by the *FCA*.

UCITS schemes

1.2.3 **R** A *UCITS scheme* is deemed to be established in the *United Kingdom*, irrespective of whether it has been established under the laws of England and Wales, Scotland or Northern Ireland.

[Note: article 4 of the *UCITS Directive*]

Master UCITS

1.2.4 **R** A *master UCITS* that has two or more *feeder UCITS* as its only *unitholders* satisfies the requirement that a *UCITS scheme* must invest capital raised from the public.

[Note: article 58(4) of the *UCITS Directive*]

Pension feeder funds

1.2.5 **G** (1) Except for (2), all provisions of the *Handbook* that apply:

- (a) to a *feeder UCITS* are also applicable to a *pension feeder fund* that is constituted as a *UCITS scheme*; and

- (b) to a *feeder NURS* are also applicable to a *pension feeder fund* that is constituted as a *non-UCITS retail scheme*.
- (2) A *pension feeder fund* may not invest in *units* of an *EEA UCITS scheme* unless that *scheme* is a *recognised scheme* (see ■ COLL 5.6.27R and ■ COLL 5.8.2AR).

Chapter 2

Authorised fund applications

2.1 Authorised fund applications

Application

- 2.1.1 **R** This chapter applies to any *person* seeking to arrange for the authorisation of a *scheme*.

Purpose

- 2.1.2 **G** This chapter helps in achieving the *statutory objectives* of protecting *consumers* by ensuring that any application for authorisation of a fund meets certain standards.

Explanation

- 2.1.3 **G**
- (1) This chapter sets out the requirements that a *person* must follow in applying for an *authorisation order* for a *scheme* under regulation 12 of the *OEIC Regulations* (Applications for authorisation), section 242 of the *Act* (Applications for authorisation of unit trust schemes) or section 261C of the *Act* (Applications for authorisation of contractual schemes).
 - (2) ■ COLLG 3A (The FCA's responsibilities under the Act) and ■ COLLG 4A (The FCA's responsibilities under the OEIC Regulations) provide more information on what the *Act* and the *OEIC Regulations* require in relation to ongoing notifications to the *FCA*.

Specific requirements on application

- 2.1.4 **D** An application for an *authorisation order* in respect of an *authorised fund* must be:
- (1) in writing in the manner directed and contain the information required in the application form available from the *FCA*;
 - (2) addressed for the attention of a member of *FCA* staff responsible for *collective investment scheme* authorisation matters; and
 - (3) delivered to the *FCA's* address by one of the following methods:
 - (a) posting; or
 - (b) leaving it at the *FCA's* address and obtaining a time-stamped receipt; or
 - (c) delivery by hand to a member of *FCA* staff responsible for *collective investment scheme* authorisation matters.

2.1.5

G

[deleted]

Chapter 3

Constitution

3.1 Introduction

Application

3.1.1

R

This chapter applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,

where the *AUT*, *ACS* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

3.1.2

G

This chapter assists in achieving the *statutory objective* of protecting *consumers*. In particular:

- (1) ■ **COLL 3.2** (The instrument constituting the fund) contains requirements about provisions which must be included in the *instrument constituting the fund* to give a similar degree of protection for investors in an *ICVC*, *AUT* or *ACS*; and
- (2) ■ **COLL 3.3** (Units) provides *rules* and *guidance* which deal with the *classes* of *units* to ensure that investors in each *class* are treated equally.

3.2 The instrument constituting the fund

Application

3.2.1

R

This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*;
- (4) an *ICVC*; and
- (5) a *nominated partner*;

except ■ COLL 3.2.8 R(UCITS obligations), which applies only to an *ICVC* or to the *authorised fund manager* of an *AUT* or *ACS* where the *ICVC*, *AUT* or *ACS* is a *UCITS scheme*.

Relationship between the instrument constituting the fund and the rules

3.2.2

R

- (1) The *instrument constituting the fund* must not contain any provision that:
 - (a) conflicts with any applicable *rule*;
 - (b) prevents *units* in the *scheme* being marketed in the *United Kingdom*; or
 - (c) is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class of units*.
- (2) Any power conferred by the *rules* on the *ICVC*, the *authorised fund manager*, any other *director* of the *ICVC*, or the *depository*, whether in a sole or joint capacity, is subject to any restriction in the *instrument constituting the fund*.

The trust deed for AUTs

3.2.3

R

An *AUT* must be constituted by a *trust deed* made between the *manager* and the *trustee*.

The contractual scheme deed for ACSs

3.2.3A **R** An ACS must be constituted by a *contractual scheme deed* made between the *authorised contractual scheme manager* and:

- (1) the *depository*, in the case of a *co-ownership scheme*; or
- (2) the *nominated partner*, in the case of a *limited partnership scheme*.

Matters which must be included in the instrument constituting the fund

3.2.4 **R** The statements and provisions required by **COLL 3.2.6 R** (Table: contents of the instrument constituting the fund) must be included in the *instrument constituting the fund*, where appropriate.

The instrument constituting the fund: OEIC Regulations, Contractual Scheme Regulations and trust law requirements

3.2.5 **G**

- (1) Several of the matters set out in **COLL 3.2.6 R** are required to be included in the *instrument constituting the fund* under the *OEIC Regulations, Contractual Scheme Regulations* or as a consequence of relevant trust law. In addition, further statements are required if the *scheme* or the *authorised fund manager* are to take advantage of the powers under the *rules* in this sourcebook.
- (2) Additional matters which are not contained in **COLL 3.2.6 R** may be required to be included in the *instrument constituting the fund* in order to comply with the *OEIC Regulations*, (particularly Schedule 2 - Instrument of Incorporation), *Contractual Scheme Regulations* and for the purposes of making the *scheme* eligible under relevant tax, pensions, or charities legislation.

Table: contents of the instrument constituting the fund

3.2.6 **R** This table belongs to **COLL 3.2.4 R** (Matters which must be included in the instrument constituting the fund).

Name of scheme	
1	A statement of: <ul style="list-style-type: none"> (1) the name of the <i>authorised fund</i>; and (2) whether the <i>authorised fund</i> is a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i>.
Investment powers in eligible markets	
2	A statement that, subject to any restriction in the <i>rules</i> in this sourcebook or the <i>instrument constituting the fund</i> , the <i>scheme</i> has the power to invest in any eligible securities market or <i>deal</i> on any <i>eligible derivatives</i> market to the extent that power to do so is conferred by COLL 5 (Investment and borrowing powers).
Unitholder's liability to pay	
3	A provision that a <i>unitholder</i> in an <i>AUT, ICVC</i> or <i>co-ownership scheme</i> is not liable to make any further payment after he has paid the <i>price</i> of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> which he holds.

- 3A A provision that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business.
- 3B A provision that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business.
- Base currency**
- 4 A statement of the *base currency* of the *scheme*.
- Valuation and pricing**
- 5 A statement setting out the basis for the valuation and pricing of the *scheme*.
- Duration of the scheme**
- 6 If the *scheme* is to be wound up after a particular period expires, a statement to that effect.
- Object of the scheme**
- 7 A statement:
- (1) as to the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest; and
 - (2) that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of that property.
- 7A Where the *authorised fund* is a *qualifying money market fund*, a statement to that effect and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*.
[deleted]
- Government and public securities: investment in one issuer**
- 8 Where relevant, for a *UCITS scheme*, a statement in accordance with COLL 5.2.12 R (Spread: government and public securities) with the names of the individual states, local authorities or public international bodies issuing or guaranteeing the *transferable securities* or *approved money-market instruments* in which more than 35% in value of the *scheme property* may be invested.
- Classes of unit**
- 9 A statement:
- (1) specifying the *classes of unit* that may be issued, and for a *scheme* which is an *umbrella*, the *classes* that may be issued in respect of each *sub-fund*; and
 - (2) if the rights of any *class of unit* differ, a statement describing those differences in relation to the differing *classes*.
- Authorised fund manager's charges and expenses**
- 10 A statement setting out the basis on which the *authorised fund manager* may make a charge and recover expenses out of the *scheme property*.
- Issue or cancellation directly through the ICVC or depositary of an AUT or ACS**

- 11 Where relevant, a statement authorising the *issue* or *cancellation* of *units* to take place through the *ICVC* or *depository* of an *AUT* or *ACS* directly.
- In specie issue and cancellation**
- 12 Where relevant, a statement authorising payment for the *issue* or *cancellation* of *units* to be made by the transfer of assets other than cash.
- Restrictions on sale and redemption**
- 13 Where relevant, the restrictions which will apply in relation to the *sale* and *redemption* of *units* under COLL 6.2.16 R (Sale and redemption).
- Voting at meetings**
- 14 The manner in which votes may be given at a meeting of *unitholders* under COLL 4.4.8 R (Voting rights).
- Certificates**
- 15 A statement authorising the *person* responsible for the *register* to charge for issuing any document recording, or for amending, an entry on the *register*, other than on the *issue* or *sale* of *units*.
- Income**
- 16 A statement setting out the basis for the distribution or re-investment of income.
- Income equalisation**
- 17 Where relevant, a provision for *income equalisation*.
- Redemption or cancellation of units on breach of law or rules**
- 18 A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.
- ICVCs: larger and smaller denomination shares**
- 19 A statement of the proportion of a *larger denomination share* represented by a *smaller denomination share* for any relevant *unit class*.
- ICVCs: resolution to remove a director**
- 20 A statement that the *ICVC* may (without prejudice to the requirements of regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of *unitholders*, remove a *director* before his period of office expires, despite anything else in the *ICVC's instrument of incorporation* or in any agreement between the *ICVC* and that *director*.
- ICVCs: unit transfers**
- 21 A statement that the *person* designated for the purposes of paragraph 4 of Schedule 4 to the *OEIC Regulations* (Share transfers) is the *person* who, for the time being, is the *ACD* of the *ICVC*.
- ICVCs and ACSs: Charges and expenses**
- 22 A statement that charges or expenses of the *ICVC* or *ACS* may be taken out of the *scheme property*.

	ICVCs: Umbrella schemes - principle of limited recourse
22A	For an <i>ICVC</i> which is an <i>umbrella</i> , a statement that the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i> , or any other <i>sub-fund</i> , and shall not be available for any such purpose.
	Co-ownership schemes: umbrella schemes - principle of limited recourse
22B	For a <i>co-ownership scheme</i> which is an <i>umbrella</i> , a statement that the property subject to a <i>sub-fund</i> is beneficially owned by the <i>participants</i> in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i> .
	AUTs: governing law for a trust deed
23	A statement that the <i>trust deed</i> is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.
	AUTs: trust deed to be binding and authoritative
24	A statement that the <i>trust deed</i> : <ol style="list-style-type: none"> (1) is binding on each <i>unitholder</i> as if it had been a party to it and that it is bound by its provisions; and (2) authorises and requires the <i>trustee</i> and the <i>manager</i> to do the things required or permitted of them by its terms.
	AUTs: declaration of trust
25	A declaration that, subject to the provisions of the <i>trust deed</i> and all <i>rules</i> made under section 247 of the <i>Act</i> (Trust scheme rules) and for the time being in force: <ol style="list-style-type: none"> (1) the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by the <i>trustee</i> on trust for the <i>unitholders</i> according to the number of <i>units</i> held by each <i>unitholder</i> or, where relevant, according to the number of undivided shares in the <i>scheme property</i> represented by the <i>units</i> held by each <i>unitholder</i>; and (2) the sums standing to the credit of the <i>distribution account</i> are held by the <i>trustee</i> on trust to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution).
	AUTs: trustee's remuneration
26	Where relevant, a statement authorising payments to the <i>trustee</i> by way of <i>remuneration</i> for its services to be paid (in whole or in part) out of the <i>scheme property</i> .
	AUTs: responsibility for the register
27	A statement identifying the <i>person</i> responsible under the <i>rules</i> for the maintenance of the <i>register</i> .
	ACs: governing law for a contractual scheme deed
27A	A statement that the <i>contractual scheme deed</i> is made under and governed by the law of England and Wales, or Scotland or Northern Ireland.
	ACs: contractual scheme deed to be binding and authoritative
27B	A statement that the <i>contractual scheme deed</i> : <ol style="list-style-type: none"> (1) is binding on each <i>unitholder</i> as if it had been a party to it and that it is bound by its provisions; and

- (2) authorises and requires the *depository* and the *authorised contractual manager* to do the things required or permitted of them by its terms.

ACsS: ownership of scheme property

27C A statement that, subject to the provisions of the *contractual scheme deed* and all *rules* made under section 261I of the *Act* (Contractual scheme rules) and for the time being in force:

- (1) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*;
- (2) the sums standing to the credit of the *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution); and
- (3) the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*).

ACsS: responsibility for the register

27D A statement identifying the *person* responsible under the *rules* for the maintenance of the *register*.

ACsS: UCITS and NURS eligible investors

27E For an *ACS* which is a *UCITS scheme* or a *non-UCITS retail scheme*, a statement that *units* may not be *issued* to a *person* other than a:

- (1) *professional ACS investor*;
- (2) *large ACS investor*; or
- (3) *person* who already holds *units* in the *scheme*.

27F A statement that the *authorised contractual scheme manager* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 27E.

ACsS: UCITS and NURS transfer of units

- 27G (1) A statement whether the transfer of *units* in the *ACS scheme* is either:
- (a) prohibited; or
- (b) allowed
- (2) Where transfer of *units* is allowed in accordance with (1)(b), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:
- (a) *professional ACS investor*;
- (b) *large ACS investor*; or
- (c) *person* who already holds *units* in the *scheme*.
- (3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

Co-ownership schemes: constitution

27H For a *co-ownership scheme*, a statement that the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*.

Co-ownership schemes: operator's powers

27I A statement that the *operator* of a *co-ownership scheme* is authorised to:

- (1) acquire, manage and dispose of the *scheme property*; and
- (2) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

Co-ownership schemes: winding-up

27J A statement that the *operator* and *depository* of a *co-ownership scheme* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*.

Limited partnership schemes: participants

27K A statement that the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*.

Limited partnership schemes: resignation of limited partners

27L A statement that the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*.

Limited partnership schemes: inability to operate as an umbrella

27M A statement that the *limited partnership scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*.

Investment in overseas property through an intermediate holding vehicle

28 If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

Transfers to a dormant asset fund operator

- 29 (1) Where relevant, a statement that the *authorised fund manager* and (if applicable) the *depository* may transfer an *eligible CIS amount* which is a *dormant asset* to a *dormant asset fund operator*, specifying the particular types of *eligible CIS amounts* which may be so transferred.
- (2) Where relevant, a statement detailing the power of the *authorised fund manager* and (if applicable) the *depository* to convert one or more *units* into a right to payment of an amount for transfer to a *dormant asset fund operator*, and a description of a *person's* right to make a *repayment claim* in relation to the amount transferred.
- (3) Where relevant, a statement that the *authorised fund manager* and (if applicable) the *depository* may transfer *unwanted asset money* to a *dormant asset fund operator*, and a description of the circumstances in which such *money* may be transferred.

[**Note:** In relation to transfers to a *dormant asset fund operator*, see COLL 3.2.6AR.]

Transfers to a dormant asset fund operator

3.2.6A **R** If the *authorised fund manager* or (where relevant) the *depository* intends to make transfers of *eligible CIS amounts* that are *dormant assets* or *unwanted asset money* to a *dormant asset fund operator*, or intends to take a power of the type referred to in **COLL 3.2.6R(29)(2)**, the applicable statements in **COLL 3.2.6R(29)(1)**, **(2)** and **(3)** must be included.

3.2.7 **R** [deleted]

UCITS obligations

3.2.8 **R** (1) The instrument constituting a *UCITS scheme* may not be amended in such a way that it ceases to be a *UCITS scheme*.

(2) [deleted]

(3) [deleted]

3.3 Units

Application

- 3.3.1 **R** This section applies to an *authorised fund manager*, an *ICVC* and the *depository* of an *AUT* or *ACS*.

Classes of units

- 3.3.2 **G**
- (1) The *instrument constituting the fund* may provide for different *classes of unit* to be issued in an *authorised fund* and, for a *scheme* which is an *umbrella*, provide that *classes of units* may be issued for each *sub-fund*.
 - (2) In order to be satisfied that **COLL 3.2.2 R** (Relationship between the Instrument constituting the fund and the rules) is complied with, the *FCA* will take into account the principles in (a) to (c) when considering proposals for *unit classes*:
 - (a) a *unit class* should not provide any advantage for that *class* if that would result in prejudice to *unitholders* of any other *class*;
 - (b) the nature, operation and effect of the new *unit class* should be capable of being explained clearly to prospective investors in the *prospectus*; and
 - (c) the effect of the new *unit class* should not appear to be contrary to the purpose of any part of this sourcebook.

Currency class units

- 3.3.3 **G** A *currency class unit* differs from other *units* mainly in that its *price*, having been calculated initially in the *base currency*, will be quoted, and normally paid for, in the currency of the designation of the *class*. Income distributions will also be paid in the currency of designation of the *class*.

Currency class units: requirements

- 3.3.4 **R** For a *currency class unit*:
- (1) the currency of the *class* concerned must not be the *base currency* (or, in the case of a *sub-fund* which, in accordance with a statement in the *prospectus*, is to be valued in some other currency, the currency of the *class* may be in the *base currency*, but must not be in that other currency);
 - (2) the *price* must be expressed in the currency of the *class* concerned;

3.3.5

R

- (3) any distribution must be paid in the currency of the *class* concerned; and
- (4) statements of amounts of *money* or values included in statements and in tax certificates must be given in the currency of the *class* concerned (whether or not also given in the *base currency*).

Rights of unit classes

- (1) If any *class of units* in an *authorised fund* has different rights from another *class of units* in that fund, the *instrument constituting the fund* must provide how the proportion of the value of the *scheme property* and the proportion of income available for allocation attributable to each such *class* must be calculated.
- (2) For an *authorised fund* which is not an *umbrella*, the *instrument constituting the fund* must not provide for any *class of units* in respect of which:
 - (a) the extent of the rights to participate in the *capital property, income property or distribution account* would be determined differently from the extent of the corresponding rights for any other *class of units*; or
 - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class of units*.
- (3) For a *scheme* which is an *umbrella*, the provisions in (2)(a) apply to *classes of units* in respect of each *sub-fund* as if each *sub-fund* were a separate *scheme*.
- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class of units* and to another *class of units* that relates solely to:
 - (a) the accumulation of income by way of periodical credit to capital rather than distribution; or
 - (b) charges and expenses that may be taken out of the *scheme property* or payable by the *unitholders*; or
 - (c) the currency in which *prices* or values are expressed or payments made; or
 - (d) the use of *derivatives* and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a *class of units* and either the *base currency* of the *scheme* or any currency in which all or part of the *scheme property* is denominated or valued (in this section referred to as a "class hedging transaction").

Hedging of unit classes

3.3.5A

R

A class hedging transaction must:

- (1) be undertaken in accordance with the requirements of ■ COLL 5 (Investment and borrowing powers); and

- (2) (for the purposes of valuing *scheme property* and calculating the *price of units* in accordance with ■ COLL 6.3 (Valuation and pricing)) be attributed only to the *class of units* for which it is undertaken.

Guidance on hedging of unit classes

3.3.5B

G

- (1) Before undertaking a class hedging transaction for a *class of units*, the *authorised fund manager* should:
- (a) ensure that the relevant *prospectus* clearly:
 - (i) states that such a transaction may be undertaken for the relevant *class of units*; and
 - (ii) explains the nature of the risks that such a transaction may pose to investors in all *classes*;
 - (b) consult the *depository* about the adequacy of the systems and controls it uses to ensure compliance with ■ COLL 3.3.5A R (Hedging of unit classes); and
 - (c) consult the *scheme auditor* and, where appropriate, *depository* to determine how:
 - (i) the transaction will be treated in the *scheme's* accounts; and
 - (ii) any consequential tax liability will be met;
 (in each case) without prejudice to *unitholders* of *classes* other than the relevant hedged *class*.
- (2) Class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a *unit*. Such transactions are not limited to *currency class units*. The *authorised fund manager* should ensure that the total value of the hedged position does not exceed the value of the relevant *class* of units unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the *class of units* should not be so large as to be speculative or to constitute an investment strategy.

Requirement: larger and smaller denomination shares in an ICVC

3.3.6

R

- (1) This *rule* applies whenever the *instrument of incorporation* of an ICVC provides, in relation to any *class*, for *smaller denomination shares* and *larger denomination shares*.
- (2) Whenever a registered holding includes a number of *smaller denomination shares* that can be consolidated into a *larger denomination share* of the same *class*, the ACD must consolidate the relevant number of those *smaller denomination shares* into a *larger denomination share*.
- (3) The ACD may, to effect a transaction in *shares*, substitute for a *larger denomination share* the relevant number of *smaller denomination shares*, in which case (2) does not apply to the resulting smaller

denomination shareholding or holdings until immediately after the completion of the transaction.

Characteristics of larger and smaller denomination shares in an ICVC

3.3.7

G

Regulation 45 of the *OEIC Regulations (Shares)* allows the rights attached to a *share* in an *ICVC* of any *class* to be expressed in two denominations, in which case the 'smaller' denomination must be such proportion of the 'larger' denomination (a standard *share*) as is fixed by the *ICVC's instrument of incorporation* as described in ■ COLL 3.2.6R (19). This will enable holdings to consist of more or less than a complete number of *larger denomination shares*.

Sub-division and consolidation of units

3.3.8

R

- (1) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* may, unless expressly forbidden to do so by the *instrument constituting the fund*, determine that:
 - (a) each *unit* of any *class* is to be subdivided into two or more *units*; or
 - (b) *units* of any *class* are to be consolidated.
- (2) The *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each *unitholder* (or the first named of joint *unitholders*) of any sub-division or consolidation under (1).

Guarantees and capital protection

3.3.9

R

If there is any arrangement intended to result in a particular capital or income return from a holding of *units* in an *authorised fund*, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

- (1) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
 - (a) *unitholders* and the *authorised fund manager* or *depository*; or
 - (b) *unitholders* intended and not intended to benefit from the arrangement; and
- (2) where, in accordance with any statement required by ■ COLL 4.2.5R (27)(c)(iv) (Table: contents of the prospectus), action is required by the *unitholders* to obtain the benefit of any guarantee, the *authorised fund manager* must provide reasonable notice in writing to *unitholders* before such action is required.

Switching rights: umbrella schemes

3.3.10

G

- (1) In accordance with section 235(4) of the *Act* (Collective investment schemes), the *participants* in a *scheme* which is an *umbrella* are entitled to exchange rights in one *sub-fund* for rights in another *sub-fund* of the *umbrella*.

- (2) To satisfy (1), where any *sub-fund* in a *scheme* which is an *umbrella* has provisions in its *prospectus* limiting the *issue* of *units* in that *sub-fund*, the *authorised fund manager* should ensure that at least two *sub-funds* are able to issue *units* at any time. In the case of an *umbrella* consisting of a single *sub-fund* that limits the issue of *units*, where the *ICVC* or the *authorised fund manager* of an *AUT* or *co-ownership scheme* of such an *umbrella* intends to offer additional *sub-funds*, it should ensure that *unitholders* will have the right to switch at all times between two or more *sub-funds* in that *umbrella*.

Chapter 4

Investor Relations

4.1 Introduction

Application

4.1.1

R

This chapter applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

4.1.2

G

This chapter helps in achieving the *statutory objective* of protecting *consumers* by ensuring *consumers* have access to up-to-date detailed information about an *authorised fund* particularly before buying *units* and thereafter an appropriate level of investor involvement exists by providing a framework for them to:

- (1) participate in the decisions on key issues concerning the *authorised fund*; and
- (2) be sent regular and relevant information about the *authorised fund*.

4.2 Pre-sale notifications

Application

- 4.2.1 **R** This section applies to an *authorised fund manager*, an *ICVC* and any other *director* of an *ICVC*

Publishing the prospectus

- 4.2.2 **R**
- (1) A *prospectus* must be drawn up in English and published as a *document* by the *authorised fund manager* and, for an *ICVC*, it must be approved by the *directors*.
 - (2) The *authorised fund manager* must ensure that the *prospectus*:
 - (a) contains the information required by **■ COLL 4.2.5 R** (Table: contents of the prospectus);
 - (aa) for a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, contains the information required by:
 - (i) **■ FUND 3.2.2R** and **■ FUND 3.2.3R** (Prior disclosure of information to investors); and
 - (ii) **■ FUND 3.2.5R** and **■ FUND 3.2.6R** (Periodic disclosure), unless the up-to-date information has been published in the *scheme's* most recent annual report or half-yearly report;
 - (b) does not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class of units*;
 - (c) does not contain any provision that conflicts with any applicable *rule*; and
 - (d) is kept up-to-date and that revisions are made to it, whenever appropriate.

Provision and filing of the prospectus

- 4.2.3 **R**
- (1) The *authorised fund manager* of an *AUT*, *ACS* or an *ICVC* must:
 - (a) provide a copy of the *scheme's* most recent *prospectus* drawn up and published in accordance with **■ COLL 4.2.2 R** (Publishing the prospectus) free of charge to any *person* on request; and
 - (b) file a copy of the *scheme's* original *prospectus*, together with all revisions thereto, with the *FCA*.
 - (1A) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* may be

provided in a *durable medium* or by means of a website that meets the *website conditions*.

- (2) [deleted]
- (3) An *authorised fund manager* must, upon the request of a *unitholder* in a *UCITS scheme* that it manages, provide information supplementary to the *prospectus* of that *scheme* relating to:
 - (a) the quantitative limits applying to the risk management of that *scheme*;
 - (b) the methods used in relation to (a); and
 - (c) any recent development of the risk and yields of the main categories of *investment*.

[Note: articles 74, 75(1) and 75(2) of the *UCITS Directive*]

Provision and filing of the prospectus of a master UCITS

4.2.3A

R

- (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must:
 - (a) where requested by an investor, provide a copy of the *prospectus* of its *master UCITS* free of charge; and
 - (b) file a copy of the *prospectus* of its *master UCITS* and any amendments thereto with the *FCA*.
- (2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* of the *master UCITS* may be provided in a *durable medium* other than paper or by means of a website that meets the *website conditions*.

[Note: articles 63(3), 63(5), 75(1) and 75(2) of the *UCITS Directive*]

Feeder NURS: provision of the prospectus of the qualifying master scheme

4.2.3B

R

- (1) The *authorised fund manager* of a *feeder NURS* must, where requested by an investor or the *FCA*, provide such *person* with a copy of the *prospectus* of its *qualifying master scheme* free of charge.
- (2) Except where an investor requests a paper copy or the use of *electronic communications* is not appropriate, the *prospectus* of the *qualifying master scheme* may be provided in a *durable medium* other than paper, or by means of a website that meets the *website conditions*.

False or misleading prospectus

4.2.4

R

- (1) The *authorised fund manager*:
 - (a) must ensure that the *prospectus* of the *authorised fund* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it; and

- (b) is liable to pay compensation to any *person* who has acquired any *units* in the *authorised fund* and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this *rule*.
- (2) The *authorised fund manager* is not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if, at the time when the *prospectus* was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:
 - (a) it continued to take such reasonable care until the time of the relevant acquisition of *units* in the *scheme*; or
 - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or
 - (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
 - (d) the *person* who acquired the *units* was not materially influenced or affected by that statement or omission in making the decision to invest.
- (3) The *authorised fund manager* is also not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if:
 - (a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of *persons* likely to acquire the *units* in question; or
 - (b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the *units* were acquired.
- (4) The *authorised fund manager* is not liable to pay compensation under (1)(b) if the *person* who acquired the *units* knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.
- (5) For the purposes of this *rule* a revised *prospectus* will be treated as a different *prospectus* from the original one.
- (6) References in this *rule* to the acquisition of *units* include references to contracting to acquire them.

Table: contents of the prospectus

4.2.5



This table belongs to ■ COLL 4.2.2 R (Publishing the prospectus).

Document status	
1	A statement that the <i>document</i> is the <i>prospectus</i> of the <i>authorised fund</i> valid as at a particular date (which shall be the date of the <i>document</i>).
Authorised fund	
2	A description of the <i>authorised fund</i> including: <ul style="list-style-type: none"> (a) its name; (aa) its <i>FCA</i> product reference number (PRN);

- (b) whether it is an *ICVC*, *ACS* or an *AUT*;
- (ba) whether it is a *UCITS* scheme or a *non-UCITS* retail scheme;
- (bb) a statement that *unitholders* in an *AUT*, *ICVC* or *co-ownership* scheme are not liable for the debts of the *authorised fund*;
- (bc) a statement that the *scheme property* of a *co-ownership* scheme is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
- (bd) a statement that a *unitholder* in a *limited partnership* scheme is not liable for the debts or obligations of the *limited partnership* scheme beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (be) a statement that the exercise of rights conferred on *limited partners* by *FCA* rules does not constitute taking part in the management of the partnership business;
- (c) for an *ICVC*, the address of its head office and the address of the place in the *United Kingdom* for service on the *ICVC* of notices or other documents required or authorised to be served on it;
- (ca) for an *ACS* that is a *limited partnership* scheme, the address of the proposed principal place of business of the *limited partnership* scheme;
- (d) the effective date of the *authorisation order* made by the *FCA* and relevant details of termination, if the duration of the *authorised fund* is limited;
- (e) its *base currency*;
- (f) for an *ICVC*, the maximum and minimum sizes of its capital;
- (g) the circumstances in which it may be wound up under the *rules* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up; and
- (h) if it is not an *umbrella*, a statement that it is a *feeder UCITS*, a *feeder NURS*, a *fund of alternative investment funds* or a property authorised investment fund, where that is the case.

Umbrella ICVCs or co-ownership schemes

- 2A The following statements for an *ICVC* or a *co-ownership* scheme which is an *umbrella*:
- (a) for an *ICVC*, a statement that its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
 - (aa) for a *co-ownership* scheme, a statement that the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liability

ies of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*; and

- (b) for an *ICVC* or a *co-ownership scheme*, a statement that while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*.

Umbrella Schemes

2B For a *UCITS scheme* or *non-UCITS retail scheme* which is an *umbrella*:

- (a) a statement detailing whether each specific *sub-fund* is a *feeder UCITS*, a *feeder NURS*, a *fund of alternative investment funds* or a *property authorised investment fund*, as appropriate; and
- (b) the *FCA* product reference number (PRN) of each *sub-fund*.

Investment objectives and policy

3 The following particulars of the investment objectives and policy of the *authorised fund*:

- (a) the investment objectives, including its financial objectives;
- (b) the *authorised fund's* investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
- (c) an indication of any limitations on that investment policy;
- (c-b) where:
 - (i) a target for a *scheme's* performance has been set, or a payment out of *scheme property* is permitted, by reference to a comparison of one or more aspects of the *scheme property* or *price* with fluctuations in the value or price of an index or indices or any other similar factor (a "*target benchmark*"); or
 - (ii) without being a *target benchmark*, arrangements are in place in relation to the *scheme* according to which the composition of the portfolio of the *scheme* is, or is implied to be, constrained by reference to the value, the price or the components of an index or indices or any other similar factor (a "*constraining benchmark*"); or
 - (iii) without being a *target benchmark* or a *constraining benchmark*, the *scheme's* performance is compared against the value or price of an index or indices or any other similar factor (a "*comparator benchmark*"),

a statement providing sufficient information for investors to understand the choice and use of any *target benchmark*, *constraining benchmark* or *comparator benchmark* in relation to the *scheme*;

- (c-a) where no *target benchmark*, *constraining benchmark* or *comparator benchmark* is used, a statement to that effect and an explanation of how investors can assess the performance of the *scheme*;
- (ca) for an *authorised fund* that has indicated in its name, investment objectives or fund literature (including in any *financial promotions* for the fund), through use of descriptions such as 'absolute return', 'total return' or similar, an intention to deliver positive returns in all market conditions (and where there is no actual guarantee of such returns), additional statements in the *authorised fund's* investment objectives specifying:
 - (i) that capital is in fact at risk;
 - (ii) the investment period over which the authorised fund aims to achieve a positive return; and
 - (iii) there is no guarantee that this will be achieved over that specific, or any, time period;
- (d) the description of assets which the *capital property* may consist of;
- (e) the proportion of the *capital property* which may consist of an asset of any description;
- (f) the description of transactions which may be effected on behalf of the *authorised fund* and an indication of any techniques and instruments or borrowing powers which may be used in the management of the *authorised fund*;
- (g) a list of the *eligible* markets through which the *authorised fund* may invest or *deal* in accordance with COLL 5.2.10 R (2)(b) (Eligible markets: requirements);
- (h) for an ICVC, a statement as to whether it is intended that the *scheme* will have an interest in any immovable property or movable property ((in accordance with COLL 5.6.4 R (2) (Investment powers: general) or COLL 5.2.8 R (2) (UCITS schemes: general)) for the direct pursuit of the ICVC's business;
- (i) where COLL 5.2.12 R (3) (Spread: government and public securities) applies:
 - (i) a prominent statement as to the fact that more than 35% in value of the *scheme property* is or may be invested in *transferable securities* or *approved money-market instruments* issued or guaranteed by a single state, local authority or public international body; and
 - (ii) the names of the individual states, local authorities or public international bodies issuing or guaranteeing the *securities* in which more than 35% in value of the *scheme property* may be invested;
- (k) for an *authorised fund* which may invest in other *schemes*, the extent to which the *scheme property* may be invested in the *units* of *schemes* which are managed by the *authorised fund manager* or by its *associate*;

- (ka) where a *scheme* is a *feeder scheme* (other than a *feeder UCITS* or a *feeder NURS*), which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the *feeder scheme* may make in it;
- (l) where a *scheme* invests principally in *scheme units*, *deposits* or *derivatives*, or replicates an index in accordance with COLL 5.2.31 R or COLL 5.6.23 R (Schemes replicating an index), a prominent statement regarding this investment policy;
- (m) where *derivatives* transactions may be used in a *scheme*, a prominent statement as to whether these transactions are for the purposes of *efficient portfolio management* (including hedging) or meeting the investment objectives or both and the possible outcome of the use of *derivatives* on the risk profile of the *scheme*;
- (n) information concerning the profile of the typical investor for whom the *scheme* is designed;
- (o) information concerning the historical performance of the *scheme*, comparing in particular its historical performance against each *target benchmark* and each *constraining benchmark* used in relation to the *scheme*, presented in accordance with COBS 4.6.2R (the rules on past performance);
- (p) for a *non-UCITS retail scheme* which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the *authorised fund* may invest;
- (pa) for a *fund investing in inherently illiquid assets* at least the following (see FUND 3.2.2R(8) (Prior disclosure of information to investors)):
 - (i) an explanation of the risks associated with the *scheme* investing in *inherently illiquid assets* and how those risks might crystallise;
 - (ii) a description of the tools and arrangements the *authorised fund manager* would propose using, including those required by *FCA rules*, to mitigate the risks referred to in (i); and
 - (iii) an explanation of the circumstances in which those tools and arrangements would typically be deployed and the likely consequences for investors;
- (q) for a *UCITS scheme* which invests a substantial portion of its assets in other *schemes*, a statement of the maximum level of management fees that may be charged to that *UCITS scheme* and to the *schemes* in which it invests;
- (qa) where the *authorised fund* is a *qualifying money market fund*, a statement identifying it as such a fund and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*;
- (r) where the net asset value of a *UCITS scheme* is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect;
- (s) for a *UCITS scheme*, a statement that any *unitholder* may obtain on request the types of information (which must be listed) referred to in COLL 4.2.3R (3) (Availability of prospectus and long report); and

- (t) for a *UCITS scheme* that is or is intended to be a *master UCITS*, a statement that it is not a *feeder UCITS* and will not hold *units* of a *feeder UCITS*.

Reporting, distributions and accounting dates

- 4 Relevant details of the reporting, accounting and distribution information which includes:
- (a) the accounting and distribution dates;
 - (b) procedures for:
 - (i) determining and applying income (including how any distributable income is paid);
 - (ii) unclaimed or unwanted distributions, including any arrangements for the transfer of:
 - (A) an unclaimed *eligible distribution of income* that is a *dormant asset* (see COLL 6.8.4R (Unclaimed, de minimis and joint unitholder distributions)); or
 - (B) *unwanted asset money* (see COLL 6.8.4AR (Unwanted asset money)); and
 - (iii) if relevant, calculating, paying and accounting for *income equalisation*; and
 - (c) the *accounting reference date* and when the long report will be published in accordance with COLL 4.5.14 R (Publication and availability of annual and half-yearly long report).
 - (d) [deleted]

Characteristics of the units

- 5 Information as to:
- (a) where there is more than one *class of unit* in *issue* or available for *issue*, the name of each such *class* and the rights attached to each *class* in so far as they vary from the rights attached to other *classes*;
 - (b) [deleted]
 - (c) how *unitholders* may exercise their voting rights and what these amount to;
 - (d) where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required, in what circumstances it may be required; and
 - (e) for an *AUT*, the fact that the nature of the right represented by *units* is that of a beneficial interest under a trust.

5A ACSs: UCITS and NURS eligible investors

- (a) A statement that *units* may not be *issued* to a *person* other than a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*.
- (b) A statement that the *authorised contractual scheme manager* must redeem units as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 5A(a).

5B ACSs: UCITS and NURS transfer of units

- (a) A statement whether the transfer of *units* in the *ACS scheme* is either:
 - (i) prohibited; or
 - (ii) allowed;
 by the *instrument constituting the fund and prospectus*.
- (b) Where transfer of *units* is allowed by the *instrument constituting the fund and prospectus* in accordance with (a)(ii), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*.
- (c) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

Authorised fund manager

- 6 The following particulars of the *authorised fund manager*:
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the date of its incorporation;
 - (d) the address of its registered office;
 - (e) the address of its head office, if that is different from the address of its registered office;
 - (f) [deleted]
 - (g) if the duration of its corporate status is limited, when that status will or may cease; and
 - (h) the amount of its issued share capital and how much of it is paid up.

Directors of an ICVC, other than the ACD

- 7 Other than for the *ACD*:
- (a) the names and positions in the *ICVC* of any other *directors* (if any); and
 - (b) the manner, amount and calculation of the *remuneration* of such *directors*.

Depositary

- 8 The following information and particulars concerning the *depository*:
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the address of its registered office;
 - (d) the address of its head office, if that is different from the address of its registered office;
 - (e) [deleted]
 - (f) a description of its duties and conflicts of interest that may arise between the *depository* and:

- (i) the *scheme*; or
- (ii) the *unitholders* in the *scheme*; or
- (iii) the *authorised fund manager*;
- (g) (i) a description of any safekeeping functions delegated by the *depository*;
- (ii) a description of any conflicts of interest that may arise from such delegation; and
- (iii) for a *UCITS scheme*, a list showing the identity of each delegate and sub-delegate; and
- (h) for a *UCITS scheme*, a statement that up-to-date information regarding the points covered under (a),(f) and (g), above, will be made available to *unitholders* on request.

Investment adviser

9 If an *investment adviser* is retained in connection with the business of an *authorised fund*:

- (a) its name; and
- (b) where it carries on a significant activity other than providing services to the *authorised fund* as an *investment adviser*, what that significant activity is.

Auditor

10 The name of the auditor of the *authorised fund*.

Contracts and other relationships with parties

11 The following relevant details:

- (a) for an *ICVC*:
 - (i) a summary of the material provisions of the contract between the *ICVC* and the *ACD* which may be relevant to *unitholders* including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
 - (ii) the main business activities of each of the *directors* (other than those connected with the business of the *ICVC*) where these are of significance to the *ICVC*'s business;
 - (iii) if any *director* is a *body corporate* in a *group* of which any other corporate *director* of the *ICVC* is a member, a statement of that fact;
 - (iv) the main terms of each contract of service between the *ICVC* and a *director* in summary form; and
 - (v) for an *ICVC* that does not hold annual general meetings, a statement that copies of contracts of service between the *ICVC* and its *directors*, including the *ACD*, will be provided to a *unitholder* on request;
- (b) the names of the *directors* of the *authorised fund manager* and the main business activities of each of the *directors* (other than those connected with the business of

the *authorised fund*) where these are of significance to the *authorised fund's* business;

- (c) a summary of the material provisions of the contract between the *ICVC* or the *manager* of the *AUT* and the *depository* which may be relevant to *unitholders*, including provisions relating to the *remuneration* of the *depository*;
- (ca) in the case of an *ACS*, a summary of the material provisions of the contracts between:
 - (i) the *authorised fund manager* and the *nominated partner* (if any); and
 - (ii) the *authorised fund manager* and *depository*;
 which may be relevant to *unitholders*, including provisions relating to the *remuneration* of the *depository*;
- (d) if an *investment adviser* retained in connection with the business of the *authorised fund* is a *body corporate* in a *group* of which any *director* of the *ICVC* or the *authorised fund manager* of the *AUT* or *ACS* is a member, that fact;
- (e) a summary of the material provisions of any contract between the *authorised fund manager* or the *ICVC* and any *investment adviser* which may be relevant to *unitholders*;
- (f) if an *investment adviser* retained in connection with the business of the *authorised fund* has the authority of the *authorised fund manager* or the *ICVC* to make decisions on behalf of the *authorised fund manager* or the *ICVC*, that fact and a description of the matters in relation to which it has that authority;
- (g) a list of:
 - (i) the functions which the *authorised fund manager* has delegated in accordance with *FCA rules*; and
 - (ii) the *person* to whom such functions have been delegated; and
- (h) in what capacity (if any), the *authorised fund manager* acts in relation to any other *regulated collective investment schemes* and the name of such *schemes*.

Register of Unitholders

12 Details of:

- (a) the address in the *United Kingdom* where the *register of unitholders*, and where relevant the *plan register* is kept and can be inspected by *unitholders*; and
- (b) the *registrar's* name and address.

Payments out of scheme property

13 In relation to each type of payment from the *scheme property*, details of:

- (a) who the payment is made to;
- (b) what the payment is for;
- (c) the rate or amount where available;
- (d) how it will be calculated and accrued;
- (e) when it will be paid;
- (f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to; and

- (g) where donations are to be made to one or more *registered charities* for Sharia compliance purposes from the *income property* of the *scheme* (in this rule, 'purification'), in addition to the details required above, the *person* who advises the *authorised fund manager* on the required percentage of the *income property* recognised for purification.

Allocation of payments

- 14 If, in accordance with COLL 6.7.10 R (Allocation of payments to income or capital), the *authorised fund manager* and the *depository* have agreed that all or part of any income expense payments may be treated as a capital expense:
- (a) that fact;
 - (b) the policy for allocation of these payments; and
 - (c) a statement that this policy may result in capital erosion or constrain capital growth.

Moveable and immovable property (ICVC only)

- 15 An estimate of any expenses likely to be incurred by the *ICVC* in respect of movable and immovable property in which the *ICVC* has an interest.

Valuation and pricing of scheme property

- 16 In relation to the valuation of *scheme property* and *pricing of units*:
- (a) either:
 - (i) in the case of a *single-priced authorised fund*, a provision that there must be only a single *price* for any *unit* as determined from time to time by reference to a particular *valuation point*; or
 - (ii) in the case of a *dual-priced authorised fund*, the *authorised fund manager's* policy for determining *prices* for the *sale* and *redemption* of *units* by reference to a particular *valuation point* and an explanation of how those *prices* may differ;
 - (b) details of:
 - (i) how the value of the *scheme property* is to be determined in relation to each purpose for which the *scheme property* must be valued;
 - (ii) how frequently and at what time or times of the *day* the *scheme property* will be regularly valued for *dealing* purposes and a description of any circumstance in which the *scheme property* may be specially valued;
 - (iii) where relevant, how the *price* of *units* of each *class* will be determined for *dealing* purposes;
 - (iv) where and at what frequency the most recent *prices* will be published; and
 - (v) where relevant in the case of a *dual-priced authorised fund*, an explanation of what is meant by *large deals* and the *authorised fund manager's* policy in relation to *large deals*; and
 - (c) if provisions in (a) and (b) do not take effect when the *instrument constituting the fund* or (where appropriate) supplemental *trust deed* takes effect, a statement of the time

from which those provisions are to take effect or how it will be determined.

Dealing

- 17 The following particulars:
- (a) the procedures, the dealing periods and the circumstances in which the *authorised fund manager* will effect:
 - (i) the *sale and redemption of units* and the settlement of transactions (including the minimum number or value of *units* which one *person* may hold or which may be subject to any transaction of *sale or redemption*) for each *class of unit* in the *authorised fund*; and
 - (ii) any direct *issue or cancellation of units* by an *ICVC* or by the *depository* of an *AUT* or *ACS* (as appropriate) through the *authorised fund manager* in accordance with COLL 6.2.7R (2) (Issue and cancellation of units through an authorised fund manager);
 - (b) the circumstances in which the *redemption of units* may be suspended;
 - (c) whether certificates will be issued in respect of registered *units*;
 - (d) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for the *issue or cancellation of units* in specie;
 - (e) the investment exchanges (if any) on which *units* in the *scheme* are listed or dealt;
 - (f) the circumstances and conditions for issuing *units* in an *authorised fund* which limit the *issue* of any *class of units* in accordance with COLL 6.2.18 R (Limited issue);
 - (g) the circumstances and procedures for the limitation or deferral of *redemptions* in accordance with COLL 6.2.19 R (Limited redemption) or COLL 6.2.21 R (Deferred redemption);
 - (h) in a *prospectus* available during the period of any *initial offer*:
 - (i) the length of the *initial offer* period;
 - (ii) the initial *price* of a *unit*, which must be in the *base currency*;
 - (iii) the arrangements for issuing *units* during the *initial offer*, including the *authorised fund manager's* intentions on investing the subscriptions received during the *initial offer*;
 - (iv) the circumstances when the *initial offer* will end;
 - (v) whether *units* will be *sold or issued* in any other currency; and
 - (vi) any other relevant details of the *initial offer* ;
 - (i) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer; and
 - (j) if the *authorised fund manager* deals as principal in *units* of the *scheme* and holds them for that purpose, a statement of its policy for doing so and, where applicable:

- (i) a description of when the *authorised fund manager* may retain any profits it earns and absorb any losses it incurs for these activities; and
- (ii) a statement of non-accountability as referred to in COLL 6.7.16G.

Transfers to a dormant asset fund operator

17A If the *authorised fund manager* or the *depository* of the *authorised fund* has a power under the *instrument constituting the fund* to transfer an *eligible CIS amount* that is a *dormant asset* to a *dormant asset fund operator* in accordance with sections 8 to 10 of the Dormant Assets Act 2022, particulars as to:

- (a) the types of such *eligible CIS amounts* which the *authorised fund manager* or the *depository* may transfer;
- (b) the circumstances in which an amount in (a) is a *dormant asset*, and any steps that the *authorised fund manager* or the *depository* must take before making a transfer;
- (c) if the *authorised fund manager* or the *depository* has a power to convert a *unit* into a right to payment of an amount in accordance with section 9(3) and (5) of the Dormant Assets Act 2022, an explanation of that power, including the circumstances in which the power may be exercised;
- (d) the consequences for the *unitholder* of a transfer of an *eligible CIS amount*, including how the amount of a *repayment claim* will be determined;
- (e) information about the steps a *person* would need to take to establish and make a *repayment claim*, and to receive payment of the *money*; and
- (f) the basis on which a *person* who has made a *repayment claim* may apply for the repaid amount or any part of it to be reinvested in *units*.

17B If the *authorised fund manager* or the *depository* has a power under the *instrument constituting the fund* to transfer *unwanted asset money* to a *dormant asset fund operator* in accordance with section 21 of the Dormant Assets Act 2022, particulars as to:

- (a) the circumstances in which a *person* may inform the *authorised fund manager* or the *depository* that they wish an *eligible CIS amount* to be transferred as *unwanted asset money* to a *dormant asset fund operator*;
- (b) how a *person* in (a) may obtain information from the *authorised fund manager* or the *depository* about the procedure by which they may ask for such *money* to be transferred;
- (c) the declaration that the *person* will need to make before the *money* can be transferred as *unwanted asset money*;
- (d) the consequences of the *money* being transferred to a *dormant asset fund operator*; and
- (e) what happens if the *dormant asset fund operator* does not consent to the transfer of the *money*.

Dilution

18 In the case of a *single-priced authorised fund*, details of what is meant by *dilution* including:

- (a) a statement explaining:
 - (i) that it is not possible to predict accurately whether *dilution* is likely to occur; and

- (ii) which of the policies the *authorised fund manager* is adopting under COLL 6.3.8 (1) (Dilution) together with an explanation of how this policy may affect the future growth of the *authorised fund*; and
- (b) if the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment*, a statement of:
 - (i) the *authorised fund manager's* policy in deciding when to require a *dilution levy*, including what is meant by *large deals* and the *authorised fund manager's* policy on *large deals*, or when to make a *dilution adjustment*;
 - (ii) the estimated rate or amount of any *dilution levy* or *dilution adjustment* based either on historical data or future projections; and
 - (iii) the likelihood that the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment* and the basis (historical or projected) on which the statement is made.

SDRT provision

19

[deleted]

Forward pricing20 An explanation of *forward pricing* under COLL 6.3.9 (Forward pricing).**Preliminary charge**21 Where relevant, a statement authorising the *authorised fund manager* to make a *preliminary charge* and specifying the basis for and current amount or rate of that charge.**Redemption charge**22 Where relevant, a statement authorising the *authorised fund manager* to deduct a *redemption charge* out of the proceeds of *redemption*; and if the *authorised fund manager* makes a *redemption charge*:

- (a) the current amount of that charge or if it is variable, the rate or method of calculating it;
- (b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the *authorised fund manager* on request; and
- (c) how the order in which *units* acquired at different times by a *unitholder* is to be determined so far as necessary for the purposes of the imposition of the *redemption charge*.

Property Authorised Investment Funds22A For a *property authorised investment fund*, a statement that:

- (1) [deleted]
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:

- (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
- (b) in the interests of the *unitholders* as a whole.

General information

23 Details of:

- (a) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
- (b) the manner in which any notice or *document* will be served on *unitholders*;
- (c) the extent to which and the circumstances in which:
 - (i) the *scheme* is liable to pay or suffer tax on any appreciation in the value of the *scheme property* or on the income derived from the *scheme property*; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to *unitholders* and payments made to *unitholders* on the *redemption of units*;
- (d) for a *UCITS scheme*, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a *unitholder* and those to be paid out of *scheme property*; and
- (e) for an *ICVC*, whether or not annual general meetings will be held.

Information on the umbrella

24 In the case of a *scheme* which is an *umbrella* with two or more *sub-funds*, the following information:

- (a) that a *unitholder* is entitled to exchange *units* in one *sub-fund* for *units* in any other *sub-fund* (other than a *sub-fund* which has limited the *issue of units*);
- (b) that an exchange of *units* in one *sub-fund* for *units* in any other *sub-fund* is treated as a *redemption and sale* and will, for *persons* subject to *United Kingdom* taxation, be a realisation for the purposes of capital gains taxation;
- (c) that in no circumstances will a *unitholder* who exchanges *units* in one *sub-fund* for *units* in any other *sub-fund* be given a right by law to withdraw from or cancel the transaction;
- (d) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (e) what charges, if any, may be made on exchanging *units* in one *sub-fund* for *units* in any other *sub-fund*; and
- (f) for each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price of units* calculated and payments made, if this currency is not the *base currency* of the *scheme* which is an *umbrella*.
- (g) [deleted]

Application of the prospectus contents to an umbrella

25 For a *scheme* which is an *umbrella*, information required must be stated:

- (a) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (b) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

Information on a feeder UCITS

25A In the case of a *feeder UCITS*, the following information:

- (a) a declaration that the *feeder UCITS* is a feeder of a particular *master UCITS* and as such permanently invests at least 85% in value of the *scheme property* in *units* of that *master UCITS*;
- (b) the investment objective and policy, including the risk profile; and whether the performance records of the *feeder UCITS* and the *master UCITS* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in *units* of the *master UCITS* is invested in accordance with COLL 5.8.3 R (Balance of scheme property: investment restrictions on a feeder UCITS);
- (c) a brief description of the *master UCITS*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the *prospectus* of the *master UCITS* may be obtained;
- (d) a summary of the *master-feeder agreement* or where applicable, the internal conduct of business rules referred to in COLL 11.3.2 R (2) (Master-feeder agreement and internal conduct of business rules);
- (e) how the *unitholders* may obtain further information on the *master UCITS* and the *master-feeder agreement*;
- (f) a description of all remuneration or reimbursement of costs payable by the *feeder UCITS* by virtue of its investment in *units* of the *master UCITS*, as well as the aggregate charges of the *feeder UCITS* and the *master UCITS*; and
- (g) a description of the tax implications of the investment into the *master UCITS* for the *feeder UCITS*.

[Note: article 63(1) of the *UCITS Directive*]

Information on a feeder NURS

25B In the case of a *feeder NURS*, the following information:

- (a) a declaration that the *feeder NURS* is a feeder of a particular *qualifying master scheme* and as such is *dedicated to units* in a single *qualifying master scheme* and the minimum (and, if relevant, maximum) investment that the *feeder NURS* may make in its *qualifying master scheme*;
- (b) the investment objective and policy of the *feeder NURS*, including its risk profile; and whether the performance records of the *feeder NURS* and the *qualifying master scheme* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in *units* of the *qualifying master scheme* is invested in accordance with COLL 5.6.7 R (6A) (Spread: general);
- (c) a brief description of the *qualifying master scheme*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the *prospectus* of the *qualifying master scheme* may be obtained;
- (d) how the *unitholders* may obtain further information on the *qualifying master scheme*;

- (e) a description of all remuneration or reimbursement of costs payable by the *feeder NURS* by virtue of its investment in *units* of the *qualifying master scheme*, as well as the aggregate charges of the *feeder NURS* and the *qualifying master scheme*; and
- (f) a description of the tax implications of the investment into the *qualifying master scheme* for the *feeder NURS*.

Marketing in another EEA state

26 [deleted]

Investment in overseas property through an intermediate holding vehicle

26A If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicle* is to enable the holding of overseas immovables by the *scheme*.

Sustainability information

26B The following information, as applicable:

- (a) where a *sustainability label* is used in relation to a *scheme*, the information set out at ESG 5.3.3R and ESG 5.3.6R, in accordance with ESG 5.3.2R(1);
- (b) where a *sustainability label* is not used in relation to a *scheme*, but that *scheme* uses the terms in ESG 4.3.2R(2) under ESG 4.3.2R(1) in the product's name or in a *financial promotion* relating to that *scheme*, the information required under ESG 5.3.2R(2).

Additional information

27 Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund manager* would have obtained by making reasonable enquiries, including but not confined to, the following matters:

- (a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating;
- (b) a clear and easily understandable explanation of any risks which investment in the *authorised fund* may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
- (c) if there is any arrangement intended to result in a particular capital or income return from a holding of *units* in the *authorised fund* or any investment objective of giving protection to the capital value of, or income return from, such a holding:
 - (i) details of that arrangement or protection;

	<ul style="list-style-type: none"> (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee; (iii) a description of the risks that could affect achievement of that return or protection; and (iv) details of the arrangements by which the <i>authorised fund manager</i> will notify <i>unitholders</i> of any action required by the <i>unitholders</i> to obtain the benefit of the guarantee; and
	(d) whether any notice has been given to <i>unitholders</i> of the <i>authorised fund manager</i> intention to propose a change to the <i>scheme</i> and if so, its particulars.
Re- mu- nera- tion Policy	
28	For a <i>UCITS scheme</i> and in relation to <i>UCITS Remuneration Code staff</i> :
	(a) up-to-date details of the <i>remuneration</i> policy including, but not limited to: <ul style="list-style-type: none"> (i) a description of how <i>remuneration</i> and benefits are calculated; and (ii) the identities of persons responsible for awarding the <i>remuneration</i> and benefits, including the composition of the <i>remuneration</i> committee, where such a committee exists; or
	(b) a summary of the <i>remuneration</i> policy and a statement that: <ul style="list-style-type: none"> (i) up-to-date details of the matters set out in (a) above are available by means of a website, including a reference to that website; and (ii) a paper copy of that website information will be made available free of charge upon request.

[Note: A transitional provision applies to row 3(ca) of this table: see ■ COLL TP 1.28.]

Information to be provided on securities financing transactions and total return swaps

4.2.5A

G

- (1) The *Securities Financing Transactions Regulation* sets out the additional information which:
 - (a) an *authorised fund manager* of a *UCITS scheme* must include in the *UCITS scheme prospectus*; and
 - (b) an *authorised fund manager* who is a *full-scope UK AIFM* of a *non-UCITS retail scheme* must make available to investors before they invest.
- (2) ■ COLL 4.2.5BEU and ■ COLL 4.2.5CEU copy out the relevant provisions of that regulation.
- (3) An *authorised fund manager* who is a *full-scope UK AIFM* of a *non-UCITS retail scheme* should publish the information in the *scheme's prospectus*.

- (4) An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme that does not use securities financing transactions or total return swaps is not required to include the information in
- COLL 4.2.5CEU in the prospectus or other pre-sale documents.

[Note: A transitional provision applies to ■ COLL 4.2.5AG: see ■ COLL TP 1.38G]

4.2.5B UK

Transparency of collective investment undertakings in pre-contractual documents

1. The prospectus referred to in [COLL 4.2.2R], and the disclosure by AIFMs to investors required by [FUND 3.2.2R] shall specify the SFT and total return swaps which UCITS management companies or UCITS investment companies, and AIFMs respectively, are authorised to use and include a clear statement that those transactions and instruments are used.
2. The prospectus and the disclosure to investors referred to in paragraph 1 shall include the data provided for in Section B of the Annex.

[Note: article 14(1) and (2) of the *Securities Financing Transactions Regulation* and article 3 for relevant definitions]

4.2.5C UK

Information to be included in the UCITS Prospectus and AIF disclosure to investors:

- General description of the SFTs and total return swaps used by the collective investment undertaking and the rationale for their use.
- Overall data to be reported for each type of SFTs and total return swaps
 - Types of assets that can be subject to them.
 - Maximum proportion of AUM that can be subject to them.
 - Expected proportion of AUM that will be subject to each of them.
- Criteria used to select counterparties (including legal status, country of origin, minimum credit rating).
- Acceptable collateral: description of acceptable collateral with regard to asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.
- Collateral valuation: description of the collateral valuation methodology used and its rationale, and whether daily mark-to-market and daily variation margins are used.
- Risk management: description of the risks linked to SFTs and total return swaps as well as risks linked to collateral management, such as operational, liquidity, counterparty, custody and legal risks and, where applicable, the risks arising from its reuse.
- Specification of how assets subject to SFTs and total return swaps and collateral received are safe-kept (e.g. with fund custodian).
- Specification of any restrictions (regulatory or self-imposed) on reuse of collateral.
- Policy on sharing of return generated by SFTs and total return swaps: description of the proportions of the revenue generated by SFTs and total return swaps that is returned to the collective investment undertaking, and of the costs and fees assigned to the manager or third parties (e.g. the agent lender). The prospectus or disclosure to investors shall also indicate if these are related parties to the manager.

Information to be included in the UCITS Prospectus and AIF disclosure to investors:

[Note: section B of the annex to the *Securities Financing Transactions Regulation* and article 3 for relevant definitions.]

[Note: AUM means assets under management.]

Guidance on contents of the prospectus

4.2.6

G

- (1) In relation to ■ COLL 4.2.5R (3)(b) the *prospectus* might include:
- (a) a description of the extent (if any) to which that policy does not envisage the *authorised fund* remaining fully invested at all times;
 - (b) for a *non-UCITS retail scheme* which may invest in immovable property:
 - (i) the maximum extent to which the *scheme property* may be invested in immovables; and
 - (ii) a statement of the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
 - (c) a description of any restrictions in the assets in which investment may be made, including restrictions in the extent to which the *authorised fund* may invest in any category of asset, indicating (if appropriate) where the restrictions are more onerous than those imposed by ■ COLL 5 (Investment and borrowing powers).
- (1A) In relation to ■ COLL 4.2.5R(3)(c-b), the *prospectus* might explain, if it is the case, that one index or factor may be used for both a *target benchmark* and a *constraining benchmark* in relation to the same *scheme*.
- (2) In relation to ■ COLL 4.2.5R (13), the type of payments are likely to include management fees (such as periodic and performance fees), *depository* fees, custodian fees, transaction fees, registrar fees, audit fees and *FCA* fees. Expenses which represent properly incurred costs of the *scheme* may also be treated as a type of payment for this purpose.
- (3) [deleted]
- (4) In relation to ■ COLL 4.2.5 R (16)(a), where the *prospectus* includes provisions for both a *single-priced authorised fund* and a *dual-priced authorised fund*, it should state prominently which method of *pricing* is applicable to which *authorised fund*, and explain how the differences between them may affect *unitholders* (for example if a *unitholder* exchanges *units* in a *single-priced authorised fund* for *units* in a *dual-priced authorised fund*, or vice versa).
- (4A) In relation to ■ COLL 4.2.5R(3)(pa)(ii) and (iii), the types of liquidity management tools and arrangements that should typically be described include:
- (a) suspension of dealing under ■ COLL 7.2.-3R, ■ COLL 7.2.-2R, ■ COLL 7.2.-1R and ■ COLL 7.2.1R;

4

- (b) fair value price adjustment (see ■ COLL 6.3.3ER, and ■ COLL 6.3.6G(1)(5) to ■ COLL 6.3.6G(1)(7));
 - (c) fair and reasonable valuation of an immovable (see ■ COLL 6.3.6G(1)(7A) and ■ COLL 6.3.6G(1)(7B)); and
 - (d) measures to prevent dilution, such as applying a dilution levy (see ■ COLL 6.3.8R).
- (5) Additional matters which are not contained in ■ COLL 4.2.5 R may be required to be included in the *prospectus*, for example for the purposes of making the *scheme* eligible under relevant tax legislation.
- (6) The *authorised fund manager* of a *UCITS scheme* should consider the appropriateness of including additional matters in its *prospectus* as a result of the *ESMA* Guidelines on ETFs and other UCITS issues (ESMA 2012/832).
- (7) (a) A *full-scope UK AIFM* that is the *authorised fund manager* of a *non-UCITS retail scheme* should ensure that the *prospectus* of the *scheme* includes the information required under ■ FUND 3.2 (Investor information) and ■ COLL 4.2.5R.
- (b) The *authorised fund manager* need not state the same information twice to satisfy both sets of requirements.



4.3 Approvals and notifications

Application

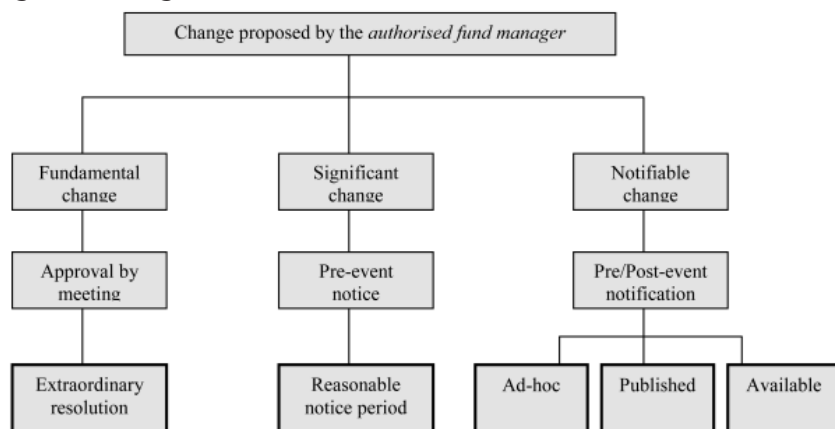
4.3.1 **R** This section applies to an *authorised fund manager*.

Explanation

- 4.3.2 **G**
- (1) The diagram in ■ COLL 4.3.3 G explains how an *authorised fund manager* should treat changes it is proposing to a *scheme* and provides an overview of the *rules* and *guidance* in this section.
 - (2) Regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FCA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depositary* or a change to the *instrument constituting the fund*. This should be kept in mind when considering any proposed change.

Diagram: Change event

4.3.3 **G** This diagram belongs to ■ COLL 4.3.2 G.



Fundamental change requiring prior approval by meeting

4.3.4 **R** (1) The *authorised fund manager*, must, by way of an *extraordinary resolution*, obtain prior approval from the *unitholders* for any

proposed change to the *scheme* which, in accordance with (2), is a fundamental change.

- (2) A fundamental change is a change or event which:
- (a) changes the purposes or nature of the *scheme*; or
 - (b) may materially prejudice a *unitholder*; or
 - (c) alters the risk profile of the *scheme*; or
 - (d) introduces any new type of payment out of *scheme property*.

Guidance on fundamental changes

4.3.5

G

- (1) Any change may be fundamental depending on its degree of materiality and effect on the *scheme* and its *unitholders*. Consequently an *authorised fund manager* will need to determine whether in each case a particular change is fundamental in nature or not.
- (2) For the purpose of ■ COLL 4.3.4R (2)(a) to ■ COLL 4.3.4R (2)(c) a fundamental change to a *scheme* is likely to include:
- (a) any proposal for a *scheme of arrangement* referred to in ■ COLL 7.6.2 R (Schemes of arrangement: requirements);
 - (b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
 - (c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity *investments*;
 - (d) a change in the investment policy to allow the *authorised fund* to invest in *derivatives* as an investment strategy which increases its volatility;
 - (e) a change to the characteristics of a *scheme* to distribute income annually rather than *monthly*; or
 - (f) the introduction of *limited redemption arrangements*.

Significant change requiring pre-event notification

4.3.6

R

- (1) The *authorised fund manager* must give prior written notice to *unitholders*, in respect of any proposed change to the operation of a *scheme* that, in accordance with (2), constitutes a significant change.
- (2) A significant change is a change or event which is not fundamental in accordance with ■ COLL 4.3.4 R but which:
- (a) affects a *unitholder's* ability to exercise his rights in relation to his investment; or
 - (b) would reasonably be expected to cause the *unitholder* to reconsider his participation in the *scheme*; or
 - (c) results in any increased payments out of the *scheme property* to an *authorised fund manager* or any other *director* of an *ICVC* or an *associate* of either; or
 - (d) materially increases other types of payment out of *scheme property*.

- (3) The notice period in (1) must be of a reasonable length (and must not be less than 60 days).

4.3.6A **R** [deleted]

Guidance on significant changes

- 4.3.7 **G**
- (1) Changes may be significant depending in each case on their degree of materiality and effect on the *scheme* and its *unitholders*. Consequently the *authorised fund manager* will need to determine whether in each case a particular change is significant in nature or not.
- (2) For the purpose of **COLL 4.3.6 R** a significant change is likely to include:
- a change in the method of *price* publication;
 - a change in any operational policy such as dilution policy or allocation of payments policy;
 - an increase in the *preliminary charge* where *units* are purchased through a *group savings plan*; or
 - a change in the *pricing* arrangements for *units* of the *scheme* so as to cause a *single-priced authorised fund* to become a *dual-priced authorised fund*, or vice versa.
- (3) Where the *directors* of an *ICVC* elect to discontinue holding annual general meetings under paragraph 37A of the *OEIC Regulations*, they are required to give 60 days' written notice to *shareholders*. For the purpose of **COLL 4.3.6 R** this should be treated as a significant change to the operation of the *scheme*.
- (4) [deleted]

Notifiable changes

- 4.3.8 **R**
- (1) The *authorised fund manager* must inform *unitholders* in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the *scheme*.
- (2) A notifiable change is a change or event, other than a fundamental change under **COLL 4.3.4 R** or a significant change under **COLL 4.3.6 R**, which a *unitholder* must be made aware of unless the *authorised fund manager* concludes that the change is insignificant.

Guidance on notifiable changes

- 4.3.9 **G**
- (1) The circumstances causing a notifiable change may or may not be within the control of the *authorised fund manager*.
- (2) For the purpose of **COLL 4.3.8 R** (Notifiable changes) a notifiable change might include:

- (a) a change of named *investment manager* where the *authorised fund* has been marketed on the basis of that individual's involvement;
 - (b) a significant political event which impacts on the *authorised fund* or its operation;
 - (c) a change to the time of the *valuation point*;
 - (d) the introduction of limited issue arrangements; or
 - (e) a change of the *depository* or a change in the name of the *authorised fund*.
- (3) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently the *authorised fund manager* will need to assess each change or event individually.
- (4) An appropriate manner of notification could include:
- (a) sending an immediate notification to the *unitholder*;
 - (b) publishing the information on a website; or
 - (c) the information being included in the next long report of the *scheme*.
- 4.3.10 **R** (1) [deleted]
- (2) [deleted]
- Change events relating to feeder UCITS and feeder NURS**
- 4.3.11 **R** Where the *authorised fund manager* of either a *feeder UCITS* or a *feeder NURS* is notified of any change in respect of its *master UCITS* or *qualifying master scheme* which has the effect of a change to the *feeder UCITS* or *feeder NURS*, the *authorised fund manager* must:
- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* or *feeder NURS* in accordance with the *rules* in this section; and
 - (2) (a) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*; or
 - (b) for a significant change, give written notice to *unitholders* of that change; or
 - (c) for a notifiable change, comply with **COLL 4.3.8 R** (Notifiable changes).
- 4.3.12 **R** The actions required by **COLL 4.3.11 R** (2)(a) and **(b)** must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* has been informed of the relevant change to the *master UCITS* or *qualifying master scheme*.
- 4.3.13 **G** (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master*

scheme in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS*. In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme*, the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with ■ COLL 11.2.2 R (Application for approval of an investment in a master UCITS).

- (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder UCITS* or *feeder NURS* if the *prices* of its own *units* continue to be published in the same way.
- (3) Where the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* receives insufficient notice of the intended change to the *master UCITS* or *qualifying master scheme* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS* or *feeder NURS*.

4.4 Meetings of Unitholders and service of notices

Application

4.4.1 **R** This section applies to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

4.4.1A **R** In this section:

- (1) a 'physical meeting' is a general meeting convened at a physical location where *unitholders*, or their proxy, must be physically present;
- (2) a 'hybrid meeting' is a general meeting which allows *unitholders*, or their proxy, to be physically present at the location where the meeting is convened, or to attend and vote remotely; and
- (3) a 'virtual meeting' is a general meeting where all *unitholders*, or their proxy, attend and vote remotely.

General meetings

- 4.4.2** **R**
- (1) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* may convene a general meeting of *unitholders* at any time.
 - (2) The *unitholders* may request the convening of a general meeting by a requisition which must:
 - (a) state the objects of the meeting;
 - (b) be dated;
 - (c) be signed by *unitholders* who, at that date, are registered as the *unitholders* of *units* representing not less than one-tenth in value (or such lower proportion stated in the *instrument constituting the fund*) of all of the *units* then in *issue*; and
 - (d) be deposited at the head office of the *ICVC* or with the *depository* of an *AUT* or *ACS*.
 - (3) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* must on receipt of a requisition that complies with (2), immediately convene a general meeting of the *authorised fund* for a date no later than eight weeks after receipt of the requisition.
 - (4) The advisory committee of a *charity authorised investment fund* may also request the convening of a general meeting of *unitholders* by giving notice in accordance with ■ COLL 14.3.5R.

4.4.2A **R** The *instrument constituting the fund* may make provision for a general meeting to be:

- (1) a *physical meeting*;
- (2) a *hybrid meeting*; or
- (3) a *virtual meeting*,
but in any event the *authorised fund manager* may hold a *virtual meeting* or a *hybrid meeting* if this is not inconsistent with any provisions in the *instrument constituting the fund*.

4.4.2B **R**

- (1) Any *unitholder* who participates remotely in a *hybrid meeting* by the means specified in the notice given under ■ COLL 4.4.5R is deemed to be present at the meeting and has the same rights as a *unitholder* who is physically present at the meeting.
- (2) Any *unitholder* who participates in a *virtual meeting* by the means specified in the notice given under ■ COLL 4.4.5R is deemed to be present at the meeting and has the same rights that the *unitholder* would have at a *physical meeting*.

4.4.2C **R** Any *unitholder* who participates remotely must be enabled to do so without having to appoint a proxy and must not be required to submit their vote on a resolution in advance of the meeting.

Class meetings

4.4.3 **R** This section applies, unless the context otherwise requires, to *class meetings* by reference to the *units* of the *class* concerned and the *unitholders* and *prices* of such *units*.

Special meaning of Unitholder in COLL 4.4

4.4.4 **R**

- (1) Unless a *unit* in the *authorised fund* is a *participating security*, in this section "*unitholders*" means *unitholders* as at a cut-off date selected by the *authorised fund manager* which is a reasonable time before notices of the relevant meeting are sent out.
- (2) If any *unit* in the *authorised fund* is a *participating security*, a registered *unitholder* of such a *unit* is entitled to receive a notice of a meeting or a notice of an adjourned meeting under ■ COLL 4.4.5 R (Notice of general meetings), if entered on the *register* at the close of business on a *day* to be determined by the *authorised fund manager*, which must not be more than 21 *days* before the notices of the meeting are sent out.
- (3) For the purposes of (2), in ■ COLL 4.4.6 R (Quorum) to ■ COLL 4.4.11 R (The chair, adjournments and minutes) "*unitholders*" in relation to those *units* means the *persons* entered on the *register* at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting.

Notice of general meetings

4.4.5

R

- (1) Where the *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* decide to convene a general meeting of *unitholders*:
 - (a) each *unitholder* must be given at least 14 *days* written notice, inclusive of the date on which the notice is first served and the day of the meeting;
 - (b) the notice must specify:
 - (i) whether the meeting is to be a *physical meeting*, a *hybrid meeting* or a *virtual meeting*;
 - (ii) if the meeting is a *physical meeting* or a *hybrid meeting*, the place of the meeting;
 - (iii) if the meeting is a *hybrid meeting* or a *virtual meeting*, the means by which a *unitholder* may participate, including any requirements for *unitholders* to register before the meeting begins or to provide proof of their right to attend, and an explanation of how participating *unitholders* may vote in a show of hands or in a poll, if they do not appoint a proxy;
 - (iv) the day and hour of the meeting;
 - (v) the terms of the resolutions to be proposed; and
 - (vi) the address of the website where the minutes of the meeting will subsequently be published; and
 - (c) a copy of the notice must be sent to the *depository*.
- (2) The accidental omission to give notice to, or the non-receipt of notice by, any *unitholder* does not invalidate the proceedings at any meeting.
- (3) Notice of an adjourned meeting of *unitholders* must be given to each *unitholder*, stating that while two *unitholders* are required to be present – in person, by proxy or remotely – to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with ■ COLL 4.4.6R (3), should two such *unitholders* not be present after a reasonable time of convening of the meeting.
- (4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.
- (5) Where the meeting is a *hybrid meeting* or a *virtual meeting*, the *authorised fund manager* must take reasonable care to ensure that the necessary supporting technology to enable *unitholders* to attend and vote is in place at the start of the meeting and operates adequately throughout its proceedings, so that *unitholders* who attend or vote remotely are not unfairly disadvantaged.

Quorum

4.4.6

R

- (1) The quorum required to conduct business at a meeting of *unitholders* is two *unitholders*, present in person, by proxy or (where applicable) remotely using the means specified in the notice given under ■ COLL 4.4.5R.

- (2) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:
 - (a) if convened on the requisition of *unitholders*, must be dissolved; and
 - (b) in any other case, must stand adjourned to:
 - (i) a day and time which is seven or more *days* after the day and time of the meeting; and
 - (ii) in the case of a *physical meeting* or a *hybrid meeting*, a place to be appointed by the chair.
- (3) If, at an adjourned meeting under (2)(b), a quorum is not present after a reasonable time from the time for the meeting, one *person* entitled to be counted in a quorum present at the meeting shall constitute a quorum.
- (4) The chair of a meeting which permits *unitholders* to attend and vote remotely must take reasonable care to give such *unitholders*:
 - (a) an adequate opportunity to be counted as present in the quorum; and
 - (b) sufficient opportunities to participate fully in the proceedings of the meeting, in particular when a vote is taken on a show of hands or by poll.

Resolutions

4.4.7

R

- (1) Except where an *extraordinary resolution* is specifically required or permitted, any resolution of *unitholders* is passed by a simple majority of the votes validly cast at a general meeting of *unitholders*.
- (2) In the case of an equality of, or an absence of, votes cast, the chair is entitled to a casting vote.
- (3) Where a resolution (including an *extraordinary resolution*) is required to conduct business at a meeting of *unitholders* and every *unitholder* is prohibited under ■ COLL 4.4.8R (4) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the *depository* to the process, instead be passed with the written consent of *unitholders* representing 50% or more, or for an *extraordinary resolution* 75% or more, of the *units* of the *scheme* in *issue*.

Voting rights

4.4.8

R

- (1) On a show of hands every *unitholder* who is present in person, or who attends the meeting remotely using the means specified in the notice in ■ COLL 4.4.5R, has one vote.
- (2) On a poll:
 - (a) votes may be given either personally or by proxy or in another manner permitted by the *instrument constituting the fund*;
 - (b) the voting rights for each *unit* must be the proportion of the voting rights attached to all of the *units* in *issue* that the *price* of

the *unit* bears to the aggregate *price* or *prices* of all of the *units* in *issue*:

- (i) if any *unit* is a *participating security*, at the time determined under ■ COLL 4.4.4R (2) (Special meaning of Unitholder in ■ COLL 4.4);
 - (ii) otherwise at the date specified in ■ COLL 4.4.4R (1); and
- (c) a *unitholder* need not use all his votes or cast all his votes in the same way.
- (3) For joint *unitholders*, the vote of the most senior who votes, whether in person, by proxy or remotely by the means referred to in (1), must be accepted to the exclusion of the votes of the other joint *unitholders*. For this purpose seniority must be determined by the order in which the names stand in the *register of unitholders*.
- (4) No *director* of the *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* can be counted in the quorum of, and no such *director* or the *authorised fund manager* of an *AUT* or *ACS* nor any of their *associates* may vote at, any meeting of the *authorised fund*.
- (5) The prohibition in (4) does not apply to any *units* held on behalf of, or jointly with, a *person* who, if himself the registered *unitholder*, would be entitled to vote and from whom the *director*, the *authorised fund manager* of an *AUT* or *ACS* or its *associate* have received voting instructions.
- (6) For the purpose of this section, *units* held, or treated as held, by the *authorised fund manager* or any other *director* of the *ICVC*, must not, except as mentioned in (5), be regarded as being in *issue*.

Right to demand a poll

4.4.9

R

- (1) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the chair;
 - (b) at least two *unitholders*; or
 - (c) the *depository*.
- (2) Unless a poll is demanded in accordance with (1), a declaration by the chair as to the result of a resolution is conclusive evidence of the fact.

Proxies

4.4.10

R

- (1) A *unitholder* may appoint another *person* to attend a general meeting and vote in his place.
- (2) Unless the *instrument constituting the fund* provides otherwise, a *unitholder* may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.

- (3) Every notice calling a meeting of a *scheme* must contain a reasonably prominent statement that a *unitholder* entitled to attend and vote may appoint a proxy.
- (4) For the appointment to be effective, any *document* relating to the appointment of a proxy must not be required to be received by the *ICVC* or any other *person* more than 48 hours before the meeting or adjourned meeting

The chair, adjournment and minutes

4.4.11

R

- (1) A meeting of *unitholders* must have a chair, nominated:
 - (a) in the case of an *AUT* or *ACS*, by the *depository*;
 - (b) in the case of an *ICVC*, by a *director* other than the *ACD* or an *associate* of the *ACD* or, if no such nomination is made, by the *depository*.
- (1) In the case of a *physical meeting* or a *hybrid meeting*, the chair must be physically present at the place of the meeting.
- (2) If the chair is not present after a reasonable time from the time for the meeting, the *unitholders* present must (subject to (1A)) choose one of them to be the chair.
- (3) The chair:
 - (a) may, with the consent of any meeting of *unitholders* at which a quorum is present; and
 - (b) must, if so directed by the meeting;

adjourn the meeting from time to time and from place to place, provided that any arrangements to enable remote participation at the original meeting are replicated for any adjourned meeting.
- (4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- (5) The *authorised fund manager* must ensure that:
 - (a) minutes of all resolutions and proceedings at every meeting of *unitholders* are made and kept; and
 - (b) any minute made in (a) is signed by the chair of the meeting of *unitholders*.
- (6) Any minute referred to in (5)(b) is conclusive evidence of the matters stated in it.
- (7) The *authorised fund manager* must publish the minutes on a website accessible to the general public without charge, no later than 5 *business days* after the meeting has taken place (but in the case of an original meeting which is adjourned, the minutes must be published no later than 5 *business days* after the adjourned meeting has taken place).

Notices to unitholders

4.4.12

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- (1) Where this sourcebook requires any notice or *document* to be served upon a *unitholder*, it is duly served :
 - (a) for *units* held by a registered *unitholder*, if it is:
 - (i) sent by post to or left at the *unitholder's* address as appearing in the *register*; or
 - (ii) sent by using an electronic medium in accordance with ■ COLL 4.4.13 R (Other notices).
 - (b) [deleted]
- (2) Any notice or *document* served by post is deemed to have been served on the second *business day* following the *day* on which it is posted.
- (3) Any *document* left at a registered address or delivered other than by post is deemed to have been served on that *day*.
- (4) Any notice or *document* served by post on one joint *unitholder* is deemed to also have been served on each other joint *unitholder* whose address, as appearing on the *register*, is the same address to which the notice or *document* was sent.

Other notices

4.4.13

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- (1) Any *document* or notice to be served on or information to be given to, any *person*, including the *FCA* , must be in legible form.
- (2) For the purposes of this *rule*, any form is legible form which:
 - (a) is consistent with the *ICVC's*, the *directors'*, the *authorised fund manager's* or the *depository's* knowledge of how the recipient of the *document* wishes or expects to receive the *document*;
 - (b) is capable of being provided in hard copy by the *authorised fund manager*, the *depository* or any other *director* of the *ICVC*;
 - (c) enables the recipient to know or record the time of receipt; and
 - (d) is reasonable in the context.
- (3) (a) In this sourcebook, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.
 - (b) In relation to an *AUT* or *ACS*, where transfer of title to *units* is to be effected on the authority of an *electronic communication*, the *authorised fund manager* must take reasonable steps to ensure that any *electronic communication* purporting to be made by the *unitholder* or his agent is in fact made by that *person*.

References to writing and electronic documents

4.4.14

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In this sourcebook references to writing and the use of electronic media should be construed in accordance with ■ GEN 2.2.14 R (References to writing) and its related *guidance* provisions.

Service of notice Regulations

4.4.15

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The provisions in this section relating to the service and delivery of notices and *documents* both to *unitholders* and to the *FCA* , disapply the provisions of The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) under the power in Regulation 1(6) of those Regulations.

4.5 Reports and accounts

Application

- 4.5.1 **R** The *rules* and *guidance* in this section apply to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

Explanation

- 4.5.2 **G** In order to provide the *unitholders* with regular and relevant information about the progress of the *authorised fund*, the *authorised fund manager* must:

- (1) prepare a long report half-yearly and annually; and
- (2) [deleted]
- (3) make the long report available to *unitholders* on request.

Full-scope UK AIFM of a non-UCITS retail scheme

- 4.5.2A **G**
- (1) A *full-scope UK AIFM* that is the *authorised fund manager* of a *non-UCITS retail scheme* should comply with both:
 - (a) **FUND 3.3** (Annual report of an AIF); and
 - (b) this chapter, regarding the preparation and publication of annual reports.
 - (2) The *authorised fund manager* need not state the same information twice to satisfy both sets of requirements.
 - (3) The *authorised fund manager*, when preparing the half-yearly long report, needs to comply only with this chapter.

Preparation of long reports

- 4.5.3 **R**
- (1) The *authorised fund manager* must for each *annual accounting period* and *half-yearly accounting period*, prepare a long report for a *scheme*.
 - (2) [deleted]

(3) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.

(4) [deleted]

ICVC requirements

4.5.4

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(1) The *OEIC Regulations* contain requirements for the preparation of annual and half-yearly reports and make the *directors* of an *ICVC* responsible for the preparation of annual and half-yearly reports on the *ICVC*.

(2) Regulations 66 (Reports: preparation), 67 (Reports: accounts) and 68 (Reports: voluntary revision) of the *OEIC Regulations* also contain a number of other requirements relating to reports and accounts of an *ICVC*.

4.5.5

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[deleted]

4.5.6

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[deleted]

Contents of the annual long report

4.5.7

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(1) An annual long report on an *authorised fund*, other than a *scheme* which is an *umbrella*, must contain:

(a) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *SORP*;

(b) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R (Authorised fund manager's report);

(c) comparative information in accordance with ■ COLL 4.5.10 R (Comparative information);

(d) the report of the *depository* in accordance with ■ COLL 4.5.11 R (Report of the depository);

(e) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor);

(f) subject to ■ COLL 4.5.7R(1)(g), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R;

(g) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and

(h) where applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments.

(2) An annual long report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:

(a) for each *sub-fund*:

- (i) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *SORP*;
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R;
 - (iii) comparative information in accordance with ■ COLL 4.5.10 R;
 - (iv) subject to ■ COLL 4.5.7R(2)(a)(v), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R;
 - (v) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and
 - (l) where applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments;
- (b) [deleted]
- (c) the report of the *depository* in accordance with ■ COLL 4.5.11 R; and
- (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must ensure that the accounts referred to in (1)(a), (2)(a) and (4)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund*, or, in the case of (2)(a) and (4)(a), the *sub-fund*, for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period.
- (4) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual long report for any one or more individual *sub-funds* of the *scheme*, in which case it must contain:
- (a) in relation to the *sub-fund*:
 - (i) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *SORP*;
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R; and
 - (iii) comparative information in accordance with ■ COLL 4.5.10 R;
 - (b) the report of the *depository* in accordance with ■ COLL 4.5.11 R; and
 - (c) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (5) An annual long report of a *UCITS scheme* which is a *feeder UCITS* must also include:
- (a) a statement on the aggregate of the payments out of *scheme property* as set out in the *prospectus* (in this rule "charges") of the *feeder UCITS* and the *master UCITS*; and

- (b) a description of how the annual long report of its *master UCITS* can be obtained.

[Note: article 63(2) of the *UCITS Directive*]

- (6) An annual long report of a *feeder NURS* must also include:
 - (a) a statement on the aggregate charges of the *feeder NURS* and its *qualifying master scheme*; and
 - (b) a description of how the annual long report (or nearest equivalent document for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.
- (7) An annual long report of a *UCITS scheme* must also include:
 - (a) (i) the total amount of *remuneration* paid by the *authorised fund manager* to its staff for the financial year, split into fixed and variable *remuneration*;
 - (ii) the number of beneficiaries; and
 - (iii) where relevant, any amount paid directly by the *UCITS scheme* itself, including any performance fee;
 - (b) the aggregate amount of *remuneration* broken down by categories of *UCITS Remuneration Code staff*;
 - (c) a description of how the *remuneration* and the benefits have been calculated;
 - (d) the outcome of the reviews referred to in ■ SYSC 19E.2.7R(1) and ■ SYSC 19E.2.8R, including any irregularities that have occurred; and
 - (e) details of any material changes to the adopted *remuneration* policy since the previous annual long report was prepared.

[Note: article 69(3) second paragraph of the *UCITS Directive*]

- (8) An annual long report of an *authorised fund* must also contain a statement setting out a description of the assessment of value required by ■ COLL 6.6.20R including:
 - (a) a separate discussion and conclusion for the matters covered in each paragraph of ■ COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;
 - (b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;
 - (c) an explanation for any case in which *unitholders* hold *units* in a *class* that is subject to higher charges than those applying to other *classes* of the same *scheme* with substantially similar rights;
 - (d) the conclusion of the *authorised fund manager's* assessment of whether the charges are justified in the context of the overall value delivered to the *unitholders* in the *scheme*; and

4.5.7A

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- (e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the *unitholders*, a clear explanation of what action has been or will be taken to address the situation.
- (9) An *AFM* need not include the statement required by (8) in its annual long report if it makes the statement available to *unitholders* annually in a composite report covering two or more of the *authorised funds* it manages, published in the same manner as the annual long report.
- (1) The *FCA* recognises that the annual long report, including the *remuneration* related disclosures in ■ COLL 4.5.7R(7), may be required to be made available to *unitholders* before the completion of the *authorised fund manager's* first annual performance period in which it has to comply with the *UCITS Remuneration Code*.
- (2) Under (1), the *FCA* expects the *authorised fund manager* to make best efforts to comply with ■ COLL 4.5.7R(7) to the extent possible.
- (3) The *authorised fund manager*, having made best efforts to achieve compliance with ■ COLL 4.5.7R(7), may omit to disclose information relating to *remuneration* where the information:
 - (a) is not available to the *authorised fund manager* for the relevant *annual accounting period*; or
 - (b) is available but will not provide materially relevant, reliable, comparable and clear information to *unitholders* about the *remuneration* policy of the *authorised fund manager*, as it affects the particular *UCITS scheme*.
- (4) Where disclosure is omitted, the *authorised fund manager* should explain the basis for that omission.

An *AFM* which is not subject to ■ COLL 6.6.20R as a result of ■ COLL 6.6.19R is not required to comply with ■ COLL 4.5.7R(8) or (9).

4.5.8-A

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[deleted]

Contents of the half-yearly long report

4.5.8

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- (1) A half-yearly long report on an *authorised fund*, other than for a *scheme* which is an *umbrella*, must contain:
 - (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R (Authorised fund manager's report);
 - (c) subject to ■ COLL 4.5.8R(1)(d), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website in accordance with ■ ESG 2.3.1R, where the half-yearly long report most closely follows the reporting deadline of 30 June, under ■ ESG 2.1.1R(1); and

- (d) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website in accordance with ■ ESG 5.5.5R, where the half-yearly long report is the report that most closely follows the date on which Part B of the *public product-level sustainability report* was published.
- (2) A half-yearly long report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
- (a) for each *sub-fund*:
- (i) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
- (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R;
- (iii) subject to ■ COLL 4.5.8R(2)(iv), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R, where the half-yearly long report most closely follows the reporting deadline of 30 June, under ■ ESG 2.1.1R(1); and
- (iv) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R, where the half-yearly long report is the report that most closely follows the date on which Part B of the *public product-level sustainability report* was published.
- (b) [deleted]
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further half-yearly long report for any one or more individual *sub-funds* of the *scheme*. Such reports must contain the accounts and the report of the *authorised fund manager* that would be required by (1) if the *sub-fund* were a separate *authorised fund*.
- (4) The half-yearly long report of a *UCITS scheme* which is a *feeder UCITS* must also include a description of how the half-yearly and annual reports of its *master UCITS* can be obtained.

[Note: article 63(2) second subparagraph of the *UCITS Directive*]

- (5) The half-yearly long report of a *feeder NURS* must also include a description of how the half-yearly and annual long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.

Annual and half-yearly long reports for sub-funds of an umbrella

4.5.8A



The *authorised fund manager* may, but need not, prepare annual and half-yearly long reports for any individual *sub-fund* of an *umbrella* in accordance

with ■ COLL 4.5.7R (4) and ■ COLL 4.5.8R (3) and make them available on request to any *unitholder* investing in the relevant *sub-fund*. However, if the *authorised fund manager* does so, this does not relieve it of its duty:

- (1) to prepare annual and half-yearly long reports on the *umbrella* as a whole (■ COLL 4.5.7R (2) and ■ COLL 4.5.8R (2)); and
- (2) to make available and publish the annual and half-yearly long reports for the *umbrella* as a whole (■ COLL 4.5.14 R).

Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

4.5.8AA G

- (1) The *Securities Financing Transactions Regulation* sets out the additional information which:
 - (a) an *authorised fund manager* of a *UCITS scheme* must include in the *scheme's* annual and half-yearly reports; and
 - (b) an *authorised fund manager* who is a *full-scope UK AIFM* of a *non-UCITS retail scheme* must include in the *scheme's* annual report.
- (2) ■ COLL 4.5.8ABEU and ■ COLL 4.5.8ACEU copy out the relevant provisions of that regulation.
- (3) An *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme* that has not used *securities financing transactions* or *total return swaps* during the relevant *annual accounting period* or *half-yearly accounting period* is not required to include the information in ■ COLL 4.5.8ACEU in its reports.

4.5.8AB UK

Transparency of collective investment undertakings in periodical reports

- 1. UCITS management companies, UCITS investment companies, and AIFMs shall inform investors on the use they make of SFTs and total return swaps in the following manner:
 - (a) for UCITS management companies or UCITS investment companies in the half-yearly and annual reports referred to in [COLL 4.5.3R (Preparation of long reports)];
 - (b) for AIFMs in the annual report referred to in [FUND 3.3.2R (Provision of annual report).]
- 2. The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex.

[Note: article 13(1) and 13(2) of the *Securities Financing Transactions Regulation* and article 3 for relevant definitions]

4.5.8AC UK

Information to be provided in the UCITS half-yearly and annual reports and the AIF's annual report

- Global data:**
- The amount of securities and commodities on loan as a proportion of total lendable assets defined as excluding cash and cash equivalents;

Information to be provided in the UCITS half-yearly and annual reports and the AIF's annual report

- The amount of assets engaged in each type of SFTs and total return swaps expressed as an absolute amount (in the collective investment undertaking's currency) and as a proportion of the collective investment undertaking's assets under management (AUM).

Concentration data:

- Ten largest collateral issuers across all SFTs and total return swaps (break down of volumes of the collateral securities and commodities received per issuer's name);
- Top 10 counterparties of each type of SFTs and total return swaps separately (Name of counterparty and gross volume of outstanding transactions).

Aggregate transaction data for each type of SFTs and total return swaps separately to be broken down according to the below categories:

- Type and quality of collateral;
- Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open maturity;
- Currency of the collateral;
- Maturity tenor of the SFTs and total return swaps broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open transactions;
- Country in which the counterparties are established;
- Settlement and clearing (e.g., tri-party, Central Counterparty, bilateral).

Data on reuse of collateral:

- Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;
- Cash collateral reinvestment returns to the collective investment undertaking.

Safekeeping of collateral received by the collective investment undertaking as part of SFTs and total return swaps:

Number and names of custodians and the amount of collateral assets safe-kept by each of the custodians

Safekeeping of collateral granted by the collective investment undertaking as part of SFTs and total return swaps:

The proportion of collateral held in segregated accounts or in pooled accounts, or in any other accounts

Data on return and cost for each type of SFTs and total return swaps

broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps

[Note: section A of the annex to the *Securities Financing Transactions Regulation* and article 3 for relevant definitions]

Additional information that may need to be included in the annual and half-yearly long report of a UCITS scheme

4.5.8AD

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The annual and half-yearly long reports of a *UCITS scheme* may be required to contain additional matters not referred to in ■ COLL 4.5.7 R and ■ COLL 4.5.8 R, such as those required by the *ESMA Guidelines on ETFs and other UCITS issues*, which can be found at

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Signing of annual and half-yearly reports

4.5.8B

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The annual reports in ■ COLL 4.5.7R (1) and ■ (2), and the half-yearly reports in ■ COLL 4.5.8R (1) and ■ (2), must:

- (1) in the case of an *ICVC*, if there is:
 - (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
 - (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT* or *ACS*, if the *authorised fund manager* has:
 - (a) more than one director, be signed by at least two directors of the *authorised fund manager*; or
 - (b) only one director, be signed by the director of the *authorised fund manager*.

Authorised fund manager's report

4.5.9

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The matters set out in (1) to (13) must be included in any *authorised fund manager's report*, except where otherwise indicated:

- (1) the names and addresses of :
 - (a) the *authorised fund manager*;
 - (b) the *depository*;
 - (c) the *registrar*;
 - (d) any *investment adviser*;
 - (e) the auditor; and
 - (f) for a *scheme* which invests in immovables, the *standing independent valuer*;
- (2) (for an *ICVC*), the names of any *directors* other than the *ACD*;
- (3) a statement of the authorised status of the *scheme*;
- (4) (for an *ICVC*) a statement that the *unitholders* of the *ICVC* are not liable for the debts of the *ICVC*;
- (5) the investment objectives of the *authorised fund*;
- (6) the policy and strategy pursued for achieving those objectives;

- (7) a review of the investment activities during the period to which the report relates;
- (7A) a portfolio statement prepared in accordance with the requirements of the *SORP*;
- (7B) in the case of an *umbrella* which has more than one *sub-fund*, particulars in the form of a table showing, as at the end of the period to which the report relates:
 - (a) for each *sub-fund*, the number of *units* in that *sub-fund* that were held by a second *sub-fund* of that *umbrella*; and
 - (b) the value of each such holding;
 or, alternatively, a statement that there were no such holdings as at the end of that period;
- (8) particulars of any fundamental changes in accordance with ■ COLL 4.3.4 R (Fundamental change requiring prior approval by meeting) made since the date of the last report;
- (9) particulars of any significant changes which have occurred in accordance with ■ COLL 4.3.6 R (Significant change requiring pre-event notification) since the date of the last report;
- (9A) in the case of a *UCITS scheme* or a *KII-compliant NURS* that does not have a significant exposure to immovables, the figure for the *synthetic risk and reward indicator* disclosed in its most recent *key investor information document* or *NURS-KII document* and any changes to that figure that have taken place during the period;
- (10) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during this period and the results of those activities as at the end of that period;
- (11) for a report on an *umbrella* prepared in accordance with ■ COLL 4.5.7R (2) or ■ COLL 4.5.8R (2) , information required by (1) to (10) must be given for each *sub-fund*, if it would vary from that given in respect of the *umbrella* as a whole;
- (12) for a *UCITS scheme* which invests a substantial proportion of its assets in other *schemes*, a statement as to the maximum proportion of management fees charged to the *scheme* itself and to other *schemes* in which that *scheme* invests; and
- (13) for a report on an individual *sub-fund* of a *scheme* which is an *umbrella* prepared in accordance with ■ COLL 4.5.7R (4) or ■ COLL 4.5.8R (3), a statement that the latest long report prepared for the *umbrella* as a whole is available on request.

Comparative information

4.5.10

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The comparative information required by ■ COLL 4.5.7 R (Contents of the annual long report), ■ COLL 8.3.5A R (Contents of the annual report), and ■ COLL 15.5.3R (Contents of the annual report) must be shown for the last three *annual accounting periods* (or all of the *authorised fund's annual accounting periods*, if fewer than three) and must set out:

(1) [deleted]

(1A) for a *unit* of each *class* in issue, a comparative table as at the end of the period to which the report relates, prepared in accordance with the requirements of the *SORP*; and showing at least:

- (a) the performance record of a *unit* of that *class*;
- (b) an indication of the actual charges and costs borne by the *class*;
- (c) the net income distributed (or, for *accumulation units*, allocated) for the *unit*, taking account of any sub-division or consolidation of *units* that occurred during that period;
- (d) the net asset value of the *unit* as at the end of the period;

(e) (i) (for a report of the *directors* of an *ICVC*) the number of *units* of the *class* in issue as at the end of the period; or

(ii) (for a report of the *authorised fund manager* of an *AUT* or an *ACS*) the number of *units* of the *class* that are in existence or treated as in existence as at the end of the period; and

(f) the highest and the lowest *prices* of the *unit* during the period;

(2) [deleted]

(2A) for the *scheme property*, its total net asset value as at the end of the period; and

(3) if, in the period covered by the information:

- (a) the *authorised fund* has been the subject of any event (such as a *scheme of arrangement*) having a material effect on the size of the *authorised fund*, but excluding any *issue* or *cancellation* of *units* for cash; or
- (b) there have been changes in the investment objective and policy of the *authorised fund*;
- (c) [deleted]

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objective and policy, and a brief description of its nature.

4.5.10A G

(1) The figure for the "return before operating charges" shown in the comparative table required by ■ COLL 4.5.10R (1A) should include all costs and charges actually borne by the *class* of *units* it describes.

(2) The indication of actual costs and charges borne by a *class* of *units* should cover pro-rata allocations of the operating charges borne by the *scheme* (e.g. annual management fee, fees and expenses payable to the *depository*, auditors and *FCA*, costs of buying and selling *units* in an underlying *scheme*, etc.), any performance-related fee and direct transaction-related costs where known to the *AFM* (e.g. dealing commission on equity transactions and stamp duty). Where possible, the operating charges should be presented as a single figure in both pence per *unit* and as a percentage of net asset value.

Report of the depositary

- 4.5.11 **R** (1) The *depository* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The annual report must contain:
- (a) a description, which may be in summary form, of the duties of the *depository* under ■ COLL 6.6.4 (General duties of the *depository*) and in respect of the safekeeping of the *scheme property*; and
- (b) a statement whether, in any material respect:
- (i) the *issue, sale, redemption and cancellation*, and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the fund*; and
- (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

Report of the auditor

- 4.5.12 **R** The *authorised fund manager* must ensure that the report of the auditor to the *unitholders* includes the following statements:
- (1) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the *SORP*, the *rules* in this sourcebook, and the *instrument constituting the fund*;
- (2) whether, in the auditor's opinion, the accounts give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* (or, as the case may be, the *scheme property* attributable to the *sub-fund*) for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period;
- (3) whether the auditor is of the opinion that proper accounting records for the *authorised fund* (or, as the case may be, *sub-fund*) have not been kept or whether the accounts are not in agreement with those records;
- (4) whether the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and
- (5) whether the auditor is of the opinion that the information given in the report of the *directors* or in the report of the *authorised fund manager* for that period is consistent with the accounts.

- 4.5.13 **R** [deleted]

Publication and availability of annual and half-yearly long report

4.5.14

R

- (1) The *authorised fund manager* must, within four *months* after the end of each *annual accounting period* and two *months* after the end of each *half-yearly accounting period* respectively, make available and publish the long reports prepared in accordance with ■ COLL 4.5.7R (1) to ■ (3) (Contents of the annual long report) and ■ COLL 4.5.8R (1) to ■ (2) (Contents of the half-yearly long report).
- (2) The reports referred to in (1) must:
 - (a) be supplied free of charge to any *person* on request;
 - (b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;
 - (c) for a *UCITS scheme*, be available for inspection by the public at a place designated by the *authorised fund manager* in each *EEA State* other than the *United Kingdom* in which *units* in the *authorised fund* were marketed before *IP completion day*, in English and in at least one of that other *EEA State's* official languages; and
 - (d) be sent to the *FCA*.

[Note: article 74 of the *UCITS Directive*]

Provision of annual and half-yearly long reports for master and feeder UCITS

4.5.15

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- (1) The *authorised fund manager* of a *UCITS scheme* which is a *feeder UCITS* must:
 - (a) where requested by an investor, provide copies of the annual and half-yearly long reports of its *master UCITS* free of charge; and
 - (b) file copies of the annual and half-yearly long reports of its *master UCITS* with the *FCA*.
- (2) Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports of its *master UCITS* may be provided in a *durable medium* other than paper or by means of a website that meets the *website conditions*.

[Note: articles 63(3) and 63(5) of the *UCITS Directive*]

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

4.5.16

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- (1) The *authorised fund manager* of a *feeder NURS* must, where requested by an investor or the *FCA*, provide to such *person* copies of the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* free of charge.
- (2) Except where an investor requests paper copies or the use of *electronic communications* is not appropriate, the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master*

scheme may be provided in a *durable medium* other than paper, or by means of a website that meets the *website conditions*.

4

4.6

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**4.6 Simplified Prospectus provisions
[deleted]**

4.7 Key investor information and marketing communications

Application

4.7.1 **R** This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* or *ICVC* is:

- (1) a *UCITS scheme*; or
- (2) a *non-UCITS retail scheme* that is offered to *retail clients* if the *authorised fund manager* or *ICVC* draws up a *NURS-KII document* instead of a *key information document* for the *scheme*.

Application of the PRIIPs regulation to NURS

4.7.1A **G**

- (1) An *authorised fund manager* of a *non-UCITS retail scheme* or an *ICVC* that is a *non-UCITS retail scheme* that is offered to *retail clients* may draw up either:
 - (a) a *key information document* in accordance with the *PRIIPs Regulation*; or
 - (b) until 31 December 2026, a *NURS-KII document* (in accordance with the exemption in article 32(2) of the *PRIIPs Regulation*).
- (2) An *authorised fund manager* of a *KII-compliant NURS* or an *ICVC* that is a *KII-compliant NURS* will need to comply with **COLL Appendix 2R** (Modifications to the *KII Regulation* for *KII-compliant NURS*), which contains a modified version of the *KII Regulation* for *KII-compliant NURS* (see **COLL 4.7.3AR**).
- (3)
 - (a) An *authorised fund manager* of a *KII-compliant NURS* or an *ICVC* that is a *non-UCITS retail scheme* that is offered to *professional clients* only is not required to comply with the *PRIIPs Regulation* or draw up a *NURS-KII document*.
 - (b) However, these *documents* may be used to market the *non-UCITS retail scheme* to *professional clients*.

[**Note:** Article 32(1) of the *PRIIPs Regulation* as amended by article 17(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019]

Key investor information

4.7.2

R

- (1) An *authorised fund manager* must draw up a short document in English containing *key investor information* for investors:
 - (a) in each *UCITS scheme* which it manages (a *key investor information document*); and
 - (b) in each *KII-compliant NURS* which it manages (a *NURS-KII document*).
- (2) The words "key investor information" must be clearly stated in the *key investor information document* and *NURS-KII document*.
- (3) *Key investor information* must include appropriate information about the essential characteristics of the *UCITS scheme* or *KII-compliant NURS* which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, therefore, to take investment decisions on an informed basis.
- (4) *Key investor information* must provide information on the following essential elements in respect of the *UCITS scheme* or *KII-compliant NURS*:
 - (a) identification of the *scheme* and that the *FCA* is the *competent authority of the scheme*;
 - (b) a short description of its investment objectives and investment policy;
 - (c) past performance presentation or, where relevant, performance scenarios;
 - (d) costs and associated charges; and
 - (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the *scheme*.
- (5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.
- (6) A *key investor information document* or *NURS-KII document* must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which that information is available to investors.
- (6A) A *key investor information document* must also include:
 - (a) a statement that the details of the up-to-date *remuneration* policy are available by means of a website, including, but not limited to, the following:
 - (i) a description of how *remuneration* and benefits are calculated; and
 - (ii) the identities of persons responsible for awarding the *remuneration* and benefits, including the composition of the *remuneration* committee, where such a committee exists; and

- (b) a reference to that website, and that a paper copy of the website information will be made available free of charge upon request.
- (6B) A *NURS-KII document* must also include a statement that the details of the up-to-date *remuneration* policy will be made available free of charge upon request, including the following:
 - (a) a description of how *remuneration* and benefits are calculated; and
 - (b) the identities of persons responsible for awarding the *remuneration* and benefits, including the composition of the *remuneration* committee, where such a committee exists.
- (7) *Key investor information* must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.
- (8) [deleted]

[Note: article 78 of the *UCITS Directive*]

Form and content of a key investor information document

4.7.3 G The *KII Regulation* sets out the form and content of a *key investor information document*. Under the Regulation an *authorised fund manager* must ensure that each *key investor information document* it produces for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in ■ [COLL Appendix 1UK](#) (The *KII Regulation*).

Form and content of a NURS-KII document

4.7.3A R The following must comply with ■ [COLL Appendix 2R](#) (Modifications to the *KII Regulation* for *KII-compliant NURS*), which contains a modified version of the *KII Regulation* for *KII-compliant NURS*, when producing a *NURS-KII document*:

- (1) an *authorised fund manager* of a *KII-compliant NURS*; and
- (2) an *ICVC* that is a *KII-compliant NURS*.

4.7.3B R [deleted]

Feeder NURS that produce a key information document

4.7.3C G The *authorised fund manager* of a *feeder NURS*, or an *ICVC* that is a *feeder NURS*, that draws up a *key information document* for a *retail client*, should cross refer to documents related to its *qualifying master scheme* which enable such clients to understand the *qualifying master scheme's* key particulars including:

- (1) its investment strategy;

- (2) a description and explanation of any material differences between the risk profile of the *feeder NURS* and that of the *qualifying master scheme*; and
- (3) its charges, including the aggregate of the charges of the *feeder NURS* and its *qualifying master scheme* as disclosed in the *feeder NURS'* most up to date *prospectus*.

[Note: article 6(2) of the *PRIPs Regulation*]

Translation of a key investor information document

4.7.4

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While the original *key investor information document* or *NURS-KII document* is required by ■ COLL 4.7.2 R to be drawn up in English, an *authorised fund manager* may prepare an accurate translation of it into any language for the purpose of *marketing* the *units* of the *UCITS scheme* or *KII-compliant NURS* in the *United Kingdom*. Any such translation should be prepared without alterations or supplements.

Pre-contractual information

4.7.5

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The *key investor information document* and the *NURS-KII document* must:

- (1) constitute pre-contractual information (see ■ COBS 14.2.1A R (Provision of key investor information document or NURS-KII document));
- (2) be fair, clear and not misleading; and
- (3) be consistent with the relevant parts of the *prospectus*.

[Note: article 79(1) of the *UCITS Directive*]

4.7.6

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- (1) Section 90ZA of the Act (Liability for key investor information) provides that a *person* will not incur civil liability solely on the basis of the *key investor information document*, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus*.
- (2) Article 20 of the *KII Regulation* prescribes the wording of a warning to investors that must be included in the "practical information" section of the *key investor information document*. It states that an *authorised fund manager* may be held liable solely on the basis of any statement contained in the document that is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus* for the *UCITS scheme*.
- (3) A *NURS-KII document* should not include the wording of warning to investors in (2) as the limitation of liability in (1) does not apply to *KII-compliant NURS*.

Revision and filing of key investor information or key information document or NURS-KII document

4.7.7

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- (1) An *authorised fund manager* must keep up to date the essential elements of:

- (a) the *key investor information document* for each *UCITS scheme* which it manages; or
 - (b) the *NURS-KII document* for each *KII-compliant NURS* which it manages.
- (2) An *authorised fund manager* must file the *key investor information document* for each *UCITS scheme* or the *NURS-KII document* for each *KII-compliant NURS* which it manages, and any amendments thereto, with the *FCA*.
- (3) An *authorised fund manager* of a *feeder UCITS* or *feeder NURS* must, in addition to (1) and (2), file the *key investor information* of its *master UCITS* or the *NURS-KII document* of its *qualifying master scheme*, and any amendments thereto, with the *FCA*.

[Note: articles 63(3) and 82 of the *UCITS Directive*]

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

4.7.8

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- (1) *Authorised fund managers* are advised that *CESR* issued two separate guidelines regarding the methodology that should be used in calculating the *synthetic risk and reward indicator* and the ongoing charges figure, both of which must be disclosed in the *key investor information document* for each *UCITS scheme* which they manage.
- (2) In line with the *KII Regulation* and ■ *COLL Appendix 2R*, *firms* in producing their *key investor information documents* or *NURS-KII documents* should take account of *CESR*'s methodologies in calculating the figures for the *synthetic risk and reward indicators* and for ongoing charges to be disclosed in those documents. For ease of reference links to these guidelines are shown below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII (CESR/10-673)

https://www.esma.europa.eu/sites/default/files/library/2015/11/10_673.pdf

Methodology for the calculation of the ongoing charges figure in the KII (CESR/10-674)

https://www.esma.europa.eu/sites/default/files/library/2015/11/10_674.pdf

- (3) [deleted]

4.7.9

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Authorised fund managers of a *UCITS scheme* and *KII-compliant NURS* are further advised that *ESMA* has issued the following guidelines, which refer to matters that should be included in the *key investor information* for certain types of *UCITS* (ESMA 2012/832).

Guidelines for competent authorities and *UCITS* management companies:
Guidelines on *ETFs* and other *UCITS* issues

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Marketing communications

4.7.10

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COBS 4.13.2R(1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) require an *authorised fund manager* to ensure that its marketing communications that contain an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme*, indicate that a *prospectus* and *key investor information* exist, specifying where they may be obtained by the public or how the public may have access to them.

4.8 Notifications for UCITS master-feeder arrangements

Application

- 4.8.1 **R** This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* or *ICVC* is a *UCITS scheme*.

Purpose

- 4.8.2 **G** The purpose of this section is to explain the type, form and timing of the notifications that are required before an existing *UCITS scheme* can begin to operate as a *feeder UCITS* for the first time, or an existing *feeder UCITS* can change to a different *master UCITS*. The process for making those changes is set out in ■ **COLL 11.2** (Approval of a feeder UCITS).

Information to be provided to Unitholders

- 4.8.3 **R**
- (1) An *authorised fund manager* of a *UCITS scheme* that has been approved by the *FCA* to operate as a *feeder UCITS*, including as a *feeder UCITS* of a different *master UCITS*, must provide the following information to its *unitholders* at least 30 calendar days before the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has already invested in them, the date when its investment will exceed the limit applicable under ■ **COLL 5.2.11R** (9) (Spread: general):
 - (a) a statement that the *FCA* has approved the investment of the *feeder UCITS* in units of that *master UCITS*;
 - (b) the *key investor information* of the *feeder UCITS* and the *master UCITS*;
 - (c) the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has already invested in them, the date when its investment will exceed the limit applicable under ■ **COLL 5.2.11R** (9);
 - (d) a statement that the *unitholders* have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or *redemption* of their *units* without any charges other than those retained by the *UCITS scheme* to cover disinvestment costs.
 - (2) Where a *UCITS marketing notification* was made in relation to a *feeder UCITS* before *IP completion day*, the *authorised fund manager*

4.8.4

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of the *feeder UCITS* must ensure that an accurate translation of the information in (1) is provided to *unitholders* in:

- (a) the official language, or one of the official languages, of the *EEA state* where the *UCITS marketing notification* was made; or
- (b) a language approved by the *overseas regulator* in the *EEA state* where the *UCITS marketing notification* was made.

[Note: article 64 first and second paragraphs of the *UCITS Directive*]

Method of providing information

The *authorised fund manager* of the *feeder UCITS* must provide to *unitholders* the information required under ■ COLL 4.8.3 R in a *durable medium*.

[Note: article 29 of the *UCITS implementing Directive No 2*]

Total expense ratio calculation [deleted]

Portfolio turnover calculation [deleted]

Chapter 5

Investment and borrowing powers

5.1 Introduction

Application

5.1.1

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- (1) Subject to 1(A), ■ COLL 5.1 to ■ COLL 5.5 apply to the *authorised fund manager* and the *depository* of an *authorised fund*, and to an *ICVC*, which is or ever has been a *UCITS scheme*.
- (1A) The only sections of ■ COLL 5 that apply to the *authorised fund manager* and the *depository* of a *feeder UCITS*, and to an *ICVC* which is a *feeder UCITS*, are ■ COLL 5.3 and ■ COLL 5.8, although particular rules in ■ COLL 5.1, ■ COLL 5.2 and ■ COLL 5.5 are incorporated by reference.
- (2) Subject to 2(A), ■ COLL 5.1, ■ COLL 5.4 and ■ COLL 5.6 apply to the *authorised fund manager* and *depository* of an *authorised fund*, and to an *ICVC*, which is a *non-UCITS retail scheme*.
- (2A) ■ COLL 5.1, ■ COLL 5.4 and ■ COLL 5.7 apply to the *authorised fund manager* and the *depository* of an *authorised fund* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *fund of alternative investment funds*.
- (3) Paragraphs (2) and (2A) cease to apply if a *non-UCITS retail scheme* converts to be authorised as a *UCITS scheme*.
- (4) [deleted]

Purpose

5.1.2

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- (1) This chapter helps in achieving the *statutory objective* of protecting *consumers* by laying down minimum standards for the investments that may be held by an *authorised fund*. In particular:
 - (a) the proportion of *transferable securities* and *derivatives* that may be held by an *authorised fund* is restricted if those *transferable securities* and *derivatives* are not listed on an *eligible market*; the intention of this is to restrict investment in *transferable securities* or *derivatives* that cannot be accurately valued and readily disposed of; and
 - (b) *authorised funds* are required to comply with a number of *investment rules* that require the spreading of risk.

(2) Table 5.1.4G gives an overview of the permissible investments and maximum investment limits for *UCITS schemes* and *non-UCITS retail schemes*.

Treatment of obligations

5.1.3

R

- (1) Where a *rule* in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the *authorised fund* under any other of those *rules* has also to be provided for.
- (2) Where a *rule* in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered:
 - (a) it must be assumed that in applying any of those *rules*, the *authorised fund* must also simultaneously satisfy any other obligation relating to cover; and
 - (b) no element of cover must be used more than once.

Indicative overview of investment and borrowing powers

5.1.4

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This table belongs to ■ COLL 5.1.2G (2).

Scheme investments and investment techniques	Limits for <i>UCITS schemes</i>		Limits for <i>non-UCITS retail schemes</i>	
	Permissible investment	Maximum limit	Permissible investment	Maximum limit
<i>Approved securities</i>	Yes	None	Yes	None
<i>Transferable securities that are not approved securities</i>	Yes	10%	Yes	20%
<i>Government and public securities</i>	Yes	None	Yes	None
<i>Regulated schemes other than qualified investor schemes and long-term asset funds</i>	Yes	None	Yes	None
<i>Unregulated schemes, qualified investor schemes, and long-term asset funds</i>	No	N/A	Yes	20% (C) (D)
<i>Warrants</i>	Yes	None	Yes	None
<i>Investment trusts</i>	Yes	None	Yes	None
<i>Deposits</i>	Yes	None	Yes	None
<i>Derivatives</i>	Yes	None	Yes	None
<i>Immovables (i.e real property)</i>	No	N/A	Yes	None
<i>Gold</i>	No	N/A	Yes	10%
<i>Hedging</i>	Yes	None	Yes	None
<i>Stock lending</i>	Yes	None	Yes	None
<i>Underwriting</i>	Yes	None	Yes	None
<i>Borrowing</i>	Yes	10% (T)	Yes	10%

Scheme investments and investment techniques	Limits for UCITS schemes		Limits for non-UCITS retail schemes	
	Yes	None	Yes	None
Cash and <i>near cash</i>				
Note:	Meaning of terms used:			
A percentage	an upper limit (though there may be limits of other kinds).			
"(T)"	temporary only- see COLL 5.5.4R(4)			
"N/A"	Not applicable			
"(C)"	In the case of a <i>non-UCITS retail scheme</i> operating as a <i>FAIF</i> there is no maximum limit - see COLL 5.7.7 R.			
"(D)"	The second <i>scheme</i> would also need to meet the applicable requirements specified in the <i>rules</i> .			



5.2 General investment powers and limits for UCITS schemes

Application

5.2.1

R

- (1) This section applies to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* of an *ICVC*, *AUT* or *ACS* where such *ICVC*, *AUT* or *ACS* is a *UCITS scheme*, in accordance with ■ COLL 5.2.2 R (Table of application).
- (2) [deleted]

Table of application

5.2.2

R

This table belongs to ■ COLL 5.2.1 R.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Au- thorised fund man- ager of an AUT or ACS</i>	<i>Depository of an ICVC, AUT or ACS</i>	<i>Au- thorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regu- lated money market fund</i>
5.2.3R		x	x		x
5.2.4R		x	x		
5.2.4AG					x
5.2.5R to 5.2.9R		x	x		
5.2.9AR		x	x		
5.2.10R(1)		x	x		
5.2.10R(2)(a)& (b)		x	x		
5.2.10R(2)(c)				x	
5.2.10R(3)		x	x		
5.2.10AR to 5.2.10EG		x	x		
5.2.11R to 5.2.20R (excluding		x	x		

Rule	ICVC	ACD	Au- thorised fund man- ager of an AUT or ACS	Deposit- ary of an ICVC, AUT or ACS	Au- thorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regu- lated money market fund
5.2.17AR and 5.2.17BG)					
5.2.17AR and 5.2.17BG	x	x	x		
5.2.20AR		x	x		x
5.2.20BG		x	x		
5.2.21R		x	x		x
5.2.22R	x		x		x

Rule	ICVC	ACD	Authorised fund manager of an AUT or ACS	Depositary of an ICVC, AUT or ACS	Authorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regulated money market fund
5.2.22AG	x	x	x	x	x
5.2.23R(1)	x	x	x		x
5.2.23R(2) to (4)	x	x	x	x	
COLL 5.2.23-AG	x	x	x		x
5.2.23CR		x	x		
5.2.26R		x	x		
5.2.27R	x				
5.2.28R			x		
5.2.29R	x	x	x		
5.2.30R	x	x	x		x
5.2.31R to 5.2.33R	x	x	x		
5.2.34G		x	x		
Note: x means "applies"					

5.2.2A G In addition to the parts of *CESR's UCITS eligible assets guidelines* specifically referred to in this section, the *authorised fund manager* of a *UCITS scheme* should have regard to the other parts of those guidelines when applying the *rules* in this section. *CESR's UCITS eligible assets guidelines* are available at https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf.

5.2.3 R **Prudent spread of risk**

(1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *UCITS scheme* as stated in the most recently published *prospectus*, the *scheme property* of the *UCITS scheme* aims to provide a prudent spread of risk.

(2) The *rules* in this section relating to spread of investments do not apply until the expiry of a period of six *months* after the date of which the *authorisation order*, in respect of the *UCITS scheme*, takes effect or on which the *initial offer* commenced, if later, provided that (1) is complied with during such period.

Investment powers: general

5.2.4 **R** The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections ■ COLL 5.2 to ■ COLL 5.5 that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the fund* may further restrict:

- (1) the kind of property in which the *scheme property* may be invested;
- (2) the proportion of the *capital property* of the *UCITS scheme* that may be invested in assets of any description;
- (3) the descriptions of transactions permitted; and
- (4) the borrowing powers of the *UCITS scheme*.

5.2.4A **G** Investment powers and limits for *UCITS schemes* that are *regulated money market funds* are set out in the *Money Market Funds Regulation*. Subject to complying with that Regulation, the *instrument constituting the fund* may further restrict:

- the kind of money market instruments in which the *scheme property* may be invested;
- the proportion of the *capital property* of the *UCITS scheme* to be invested in money market instruments of any description;
- the descriptions of transactions permitted; and
- the borrowing powers of the *UCITS scheme*.

Valuation

5.2.5 **R** (1) In this chapter, the value of the *scheme property* of a *UCITS scheme* means the net value determined in accordance with ■ COLL 6.3 (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.

- (2) When valuing the *scheme property* for the purposes of this chapter:
 - (a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a *valuation point*, but the valuation and the relevant time do not count as a valuation or a *valuation point* for the purposes of ■ COLL 6.3 (Valuation and pricing);
 - (b) *initial outlay* is to be regarded as remaining part of the *scheme property*; and
 - (c) if the *authorised fund manager*, having taken reasonable care, determines that the *UCITS scheme* will become entitled to any unrealised profit which has been made on account of a transaction in *derivatives*, that prospective entitlement is to be regarded as part of the *scheme property*.

(3) When valuing the *scheme property* of a *dual-priced authorised fund*, the *cancellation* basis of valuation referred to in ■ COLL 6.3.3 R (2) (Valuation) is to be applied.

Valuation guidance

5.2.6 **G** It should be noted that for the purpose of ■ COLL 5.2.5 R, ■ COLL 6.3 may be affected by specific provisions in this chapter such as, for example, ■ COLL 5.4.6 R (Treatment of collateral).

UCITS schemes: permitted types of scheme property

5.2.6A **R** The *scheme property* of a *UCITS scheme* must, except where otherwise provided in the *rules* in this chapter, consist solely of any or all of:

- (1) *transferable securities*;
- (2) *approved money-market instruments*;
- (3) *units in collective investment schemes*;
- (4) *derivatives and forward transactions*;
- (5) *deposits*; and
- (6) (for an *ICVC*) *movable and immovable property that is essential for the direct pursuit of the ICVC's business*;

in accordance with the *rules* in this section.

[**Note:** articles 50(1) (in conjunction with other *rules* in this section) and 50(3) of the *UCITS Directive*]

Transferable securities

5.2.7 **R**

- (1) A *transferable security* is an *investment* which is any of the following:
 - (a) a *share*;
 - (b) a *debenture*;
 - (ba) an *alternative debenture*;
 - (c) a *government and public security*;
 - (d) a *warrant*; or
 - (e) a *certificate representing certain securities*.
- (2) An *investment* is not a *transferable security* if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (3) In applying (2) to an *investment* which is issued by a *body corporate*, and which is a *share* or a *debenture*, the need for any consent on the part of the *body corporate* or any members or *debenture* holders of it may be ignored.
- (4) An *investment* is not a *transferable security* unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the *investment*.

Investment in transferable securities

5.2.7A

R

- (1) A *UCITS scheme* may invest in a *transferable security* only to the extent that the *transferable security* fulfils the following criteria:
- (a) the potential loss which the *UCITS scheme* may incur with respect to holding the *transferable security* is limited to the amount paid for it;
 - (b) its liquidity does not compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3));
 - (c) reliable valuation is available for it as follows:
 - (i) in the case of a *transferable security* admitted to or *dealt* in on an *eligible* market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
 - (ii) in the case of a *transferable security* not admitted to or *dealt* in on an *eligible* market, where there is a valuation on a periodic basis which is derived from information from the issuer of the *transferable security* or from competent investment research;
 - (d) appropriate information is available for it as follows:
 - (i) in the case of a *transferable security* admitted to or *dealt* in on an *eligible* market, where there is regular, accurate and comprehensive information available to the market on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
 - (ii) in the case of a *transferable security* not admitted to or *dealt* in on an *eligible* market, where there is regular and accurate information available to the *authorised fund manager* on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
 - (e) it is negotiable; and
 - (f) its risks are adequately captured by the risk management process of the *authorised fund manager*.
- (2) Unless there is information available to the *authorised fund manager* that would lead to a different determination, a *transferable security* which is admitted to or *dealt* in on an *eligible* market shall be presumed:
- (a) not to compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*; and
 - (b) to be negotiable.

[Note: article 2(1) of the *UCITS eligible assets Directive*]

5.2.7B

G

Where the *authorised fund manager* considers that the liquidity or negotiability of a *transferable security* might compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*, it should assess the liquidity risk in accordance with *CESR's UCITS eligible assets guidelines* with respect to article 2(1) of the *UCITS eligible assets Directive*.

Closed end funds constituting transferable securities

5.2.7C

R

A unit in a closed end fund shall be taken to be a *transferable security* for the purposes of investment by a *UCITS scheme*, provided it fulfils the criteria for *transferable securities* set out in ■ COLL 5.2.7A R, and either:

- (1) where the closed end fund is constituted as an investment company or a unit trust:
 - (a) it is subject to corporate governance mechanisms applied to companies; and
 - (b) where another *person* carries out asset management activity on its behalf, that *person* is subject to national regulation for the purpose of investor protection; or
- (2) where the closed end fund is constituted under the law of contract:
 - (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
 - (b) it is managed by a *person* who is subject to national regulation for the purpose of investor protection.

[Note: articles 2(2)(a) and (b) of the *UCITS eligible assets Directive*]

5.2.7D

G

- (1) An *authorised fund manager* should not invest the *scheme property* of a *UCITS scheme* in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.
- (2) When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the *authorised fund manager* should consider whether the contract on which the closed end fund is based provides its investors with rights to:
 - (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
 - (b) control the investment policy of the closed end fund through appropriate mechanisms.
- (3) The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

[Note: *CESR's UCITS eligible assets guidelines* with respect to articles 2(2) and 2(2)(b)(ii) of the *UCITS eligible assets Directive*]

Transferable securities linked to other assets

5.2.7E

R

- (1) A *UCITS scheme* may invest in any other *investment* which shall be taken to be a *transferable security* for the purposes of investment by a *UCITS scheme* provided the *investment*:
 - (a) fulfils the criteria for *transferable securities* set out in ■ COLL 5.2.7A R; and

(b) is backed by or linked to the performance of other assets, which may differ from those in which a *UCITS scheme* can invest.

- (2) Where an *investment* in (1) contains an embedded derivative component (see ■ COLL 5.2.19R (3A)), the requirements of this section with respect to *derivatives* and forwards will apply to that component.

[Note: articles 2(2)(c) and 2(3) of the *UCITS eligible assets Directive*]

Approved money-market instruments

5.2.7F

R

An *approved money-market instrument* is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

[Note: article 2(1)(o) of the *UCITS Directive*]

5.2.7G

R

A money-market instrument shall be regarded as normally dealt in on the money market if it:

- (1) has a maturity at issuance of up to and including 397 days;
- (2) has a residual maturity of up to and including 397 days;
- (3) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
- (4) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (1) or (2) or is subject to yield adjustments as set out in (3).

[Note: article 3(2) of the *UCITS eligible assets Directive*]

5.2.7H

R

- (1) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the *authorised fund manager* to *redeem units* at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3)).
- (2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:
 - (a) enabling the *authorised fund manager* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
 - (b) based either on market data or on valuation models including systems based on amortised costs.
- (3) A money-market instrument that is normally *dealt* in on the money market and is admitted to or dealt in on an *eligible* market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the

authorised fund manager that would lead to a different determination.

[Note: article 4 of the *UCITS eligible assets Directive*]

Guidance on assessing liquidity and quality of money-market instruments

5.2.7I

G

- (1) The *authorised fund manager* should assess the liquidity of a money-market instrument in accordance with *CESR's UCITS eligible assets guidelines* with respect to article 4(1) of the *UCITS eligible assets Directive*.
- (2) Where an *approved money-market instrument* forms part of the *scheme property* of a *qualifying money market fund*, the *authorised fund manager* should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

[Note: *CESR's UCITS eligible assets guidelines* with respect to article 4(2) of the *UCITS eligible assets Directive*.]

Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market

5.2.8

R

- (1) [deleted]
- (2) [deleted]
- (3) *Transferable securities* and *approved money-market instruments* held within a *UCITS scheme* must be:
 - (a) admitted to or *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (1)(a) (Eligible markets: requirements); or
 - (b) *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (1)(b); or
 - (c) admitted to or *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (2); or
 - (d) for an *approved money-market instrument* not admitted to or *dealt in* on an *eligible* market, within ■ COLL 5.2.10AR (1); or
 - (e) recently issued *transferable securities*, provided that:
 - (i) the terms of issue include an undertaking that application will be made to be admitted to an *eligible* market; and
 - (ii) such admission is secured within a year of issue.
- (4) However, a *UCITS scheme* may invest no more than 10% of the *scheme property* in *transferable securities* and *approved money-market instruments* other than those referred to in (3).

[Note: article 50(1)(a)-(d) and (h) and (2)(a) of the *UCITS Directive* and article 3(1) of the *UCITS eligible assets Directive*]

Eligible markets regime: purpose

- 5.2.9 **G** (1) This section specifies criteria based on those in article 50 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.
- (2) Where a market ceases to be *eligible*, *investments* on that market cease to be *approved securities*. The 10% restriction in **COLL 5.2.8 R (4)** applies, and exceeding this limit because a market ceases to be *eligible* will generally be regarded as a breach beyond the control of the *authorised fund manager*.

5.2.9A **R** The ability to hold up to 10% of the *scheme property* in ineligible assets under **COLL 5.2.8 R (4)** is subject to the following limitations:

- (1) for a *qualifying money market fund*, the 10% restriction is limited to high quality money market instruments with a maturity or residual maturity of not more than 397 *days*, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 *days*.
- (2) [deleted]

Eligible markets: requirements

- 5.2.10 **R** (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:
- (a) a *regulated market*;
 - (b) a market in the *United Kingdom* or an *EEA State* which is regulated, operates regularly and is open to the public; or
 - (c) any market within (2).
- (2) A market not falling within (1)(a) and (b) is *eligible* for the purposes of the *rules* in this sourcebook if:
- (a) the *authorised fund manager*, after consultation with and notification to the *depository* (and in the case of an *ICVC*, any other *directors*), decides that market is appropriate for investment of, or *dealing in*, the *scheme property*;
 - (b) the market is included in a list in the *prospectus*; and
 - (c) the *depository* has taken reasonable care to determine that:
 - (i) adequate custody arrangements can be provided for the *investment dealt in* on that market; and
 - (ii) all reasonable steps have been taken by the *authorised fund manager* in deciding whether that market is *eligible*.
- (3) In (2)(a), a market must not be considered appropriate unless it:
- (a) is regulated;
 - (b) operates regularly;
 - (c) is recognised as a market or exchange or as a self-regulating organisation by an *overseas regulator*;
 - (d) is open to the public;

- (e) is adequately liquid; and
- (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

Money-market instruments with a regulated issuer

5.2.10A

R

(1) (In addition to instruments admitted to or *dealt* in on an *eligible* market) a *UCITS* scheme may invest in an *approved money-market instrument* provided it fulfils the following requirements:

- (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
- (b) the instrument is issued or guaranteed in accordance with **COLL 5.2.10B R**.

[**Note:** article 50(1)(h)(i) to (iii) of the *UCITS Directive*]

(2) The issue or the issuer of a money-market instrument, other than one dealt in on an *eligible* market, shall be regarded as regulated for the purpose of protecting investors and savings if:

- (a) the instrument is an *approved money-market instrument*;
- (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with **COLL 5.2.10C R**; and
- (c) the instrument is freely transferable.

[**Note:** article 5(1) of the *UCITS eligible assets Directive*]

Issuers and guarantors of money-market instruments

5.2.10B

R

(1) A *UCITS* scheme may invest in an *approved money-market instrument* if it is:

- (a) issued or guaranteed by any one of the following:
 - (i) a central authority of the *United Kingdom* or an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;
 - (ii) a regional or local authority of the *United Kingdom* or an *EEA State*;
 - (iii) the Bank of England, the European Central Bank or a central bank of an *EEA State*;
 - (iv) the European Union or the European Investment Bank;
 - (v) a non-*EEA State* or, in the case of a federal state, one of the members making up the federation;
 - (vi) a public international body to which the *United Kingdom* or one or more *EEA States* belong; or
- (b) issued by a body, any *securities* of which are dealt in on an *eligible* market; or
- (c) issued or guaranteed by an establishment which is:
 - (i) subject to prudential supervision in accordance with criteria defined by *UK* or *EU* law; or

(ii) subject to and complies with prudential rules considered by the FCA to be at least as stringent as those laid down by UK or EU law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

- (a) it is located in the *European Economic Area*;
- (b) it is located in an *OECD* country belonging to the Group of Ten;
- (c) it has at least investment grade rating;
- (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by UK or EU law.

[Note: article 6 of the *UCITS eligible assets Directive*]

Appropriate information for money-market instruments

5.2.10C

R

- (1) In the case of an *approved money-market instrument* within ■ COLL 5.2.10BR (1)(b) or issued by a body of the type referred to in ■ COLL 5.2.10E G; or which is issued by an authority within ■ COLL 5.2.10BR (1)(a)(ii) or a public international body within ■ COLL 5.2.10BR (1)(a)(vi) but is not guaranteed by a central authority within ■ COLL 5.2.10BR (1)(a)(i), the following information must be available:
- (a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme.
- (2) In the case of an *approved money-market instrument* issued or guaranteed by an establishment within ■ COLL 5.2.10BR (1)(c), the following information must be available:
- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.
- (3) In the case of an *approved money-market instrument*:
- (a) within ■ COLL 5.2.10BR (1)(a)(i), ■ (iv) or ■ (v); or
 - (b) which is issued by an authority within ■ COLL 5.2.10BR (1)(a)(ii) or a public international body within ■ COLL 5.2.10BR (1)(a)(vi) and is guaranteed by a central authority within ■ COLL 5.2.10BR (1)(a)(i);

information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

[Note: articles 5(2), (3) and (4) of the *UCITS eligible assets Directive*]

5.2.10D G

- (1) The appropriately qualified third parties referred to in ■ COLL 5.2.10CR (1)(a) should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.
- (2) The regular updates of information referred to in ■ COLL 5.2.10CR (1)(b) and ■ (2)(b) should normally occur on at least an annual basis.

[Note: CESR's *UCITS eligible assets guidelines* with respect to articles 5(2)(b) and (c) of the *UCITS eligible assets Directive*]

Other money-market instruments with a regulated issuer

5.2.10E G

- (1) In addition to instruments admitted to or *dealt* in on an *eligible* market, a *UCITS scheme* may also with the express consent of the *FCA* (which takes the form of a *waiver* under sections 138A and 138B of the *Act* as applied by section 250 of the *Act* or regulation 7 of the *OEIC Regulations*) invest in an *approved money-market instrument* provided:
 - (a) the issue or issuer is itself regulated for the purpose of protecting investors and savings in accordance with ■ COLL 5.2.10AR (2);
 - (b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of ■ COLL 5.2.10BR (1)(a), ■ (b) or ■ COLL 5.2.10BR (1)(c); and
 - (c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the requirements of the Companies Act 2006 applicable to public companies limited by shares or by guarantee, or private companies limited by shares or by guarantee, or, for companies incorporated in the *EEA*, Directive 2013/34/EU, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.
- (2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
- (3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by *UK* or *EU* law or an establishment which is subject to and complies with prudential rules considered by the *FCA* (in accordance with ■ COLL 5.2.10BR (2)) to be at least as stringent as those laid down by *UK* or *EU* law.

[Note: article 50(1)(h)(iv) of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

Spread: general

5.2.11

R

- (1) This *rule* does not apply in respect of a *transferable security* or an *approved money-market instrument* to which ■ COLL 5.2.12R (Spread: government and public securities) applies.
- (2) For the purposes of this *rule* companies included in the same group for the purposes of consolidated accounts as defined in accordance with section 399 of Companies Act 2006, Directive 2013/34/EU or, in the same group in accordance with international accounting standards, are regarded as a single body.
- (3) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (4) Not more than 5% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body.
- (5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the *scheme property*. *Covered bonds* need not be taken into account for the purpose of applying the limit of 40%.
- (5A) The limit of 5% in (4) is raised to 25% in value of the *scheme property* in respect of *covered bonds*, provided that when a *UCITS scheme* invests more than 5% in *covered bonds* issued by a single body, the total value of *covered bonds* held must not exceed 80% in value of the *scheme property*.
- (6) In applying (4) and (5), *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (7) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 5% in value of the *scheme property*; this limit being raised to 10% where the counterparty is an *approved bank*.
- (8) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and *approved money-market instruments* issued by the same group (as referred to in (2)).
- (9) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (10) In applying the limits in (3),(4),(5), (6) and (7) in relation to a single body, and subject to (5A), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
 - (a) *transferable securities* (including *covered bonds*) or *approved money-market instruments* issued by that body; or
 - (b) *deposits* made with that body; or
 - (c) exposures from *OTC derivatives* transactions made with that body.
- (11) [deleted]

(12) [deleted]

(13) [deleted]

(14) [deleted]

[Note: article 52 of the *UCITS Directive*]

Guidance on spread: general

5.2.11A **G**

(1) [deleted]

(2) [deleted]

(3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it and other companies in its group on behalf of the *scheme*.

Counterparty risk and issuer concentration

5.2.11B **R**

(1) An *authorised fund manager* of a *UCITS scheme* must ensure that *counterparty risk* arising from an *OTC derivative* transaction is subject to the limits set out in ■ COLL 5.2.11R (7) and ■ COLL 5.2.11R (10).

(2) When calculating the exposure of a *UCITS scheme* to a counterparty in accordance with the limits in ■ COLL 5.2.11R (7), the *authorised fund manager* must use the positive mark-to-market value of the *OTC derivative* contract with that counterparty.

(3) An *authorised fund manager* may net the *OTC derivative* positions of a *UCITS scheme* with the same counterparty, provided:

(a) it is able legally to enforce netting agreements with the counterparty on behalf of the *UCITS scheme*; and

(b) the netting agreements in (a) do not apply to any other exposures the *UCITS scheme* may have with that same counterparty.

(4) An *authorised fund manager* of a *UCITS scheme* may reduce the exposure of the *scheme property* to a counterparty to an *OTC derivative* transaction through the receipt of collateral. Collateral received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

(5) An *authorised fund manager* of a *UCITS scheme* must take collateral into account in calculating exposure to *counterparty risk* in accordance with the limits in ■ COLL 5.2.11BR (7) when it passes collateral to the counterparty to an *OTC derivative* transaction on behalf of the *UCITS scheme*.

(6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the *authorised fund manager* is able legally to enforce netting arrangements with this counterparty on behalf of the *UCITS scheme*.

5.2.12

R

- (7) An *authorised fund manager* of a *UCITS scheme* must calculate the issuer concentration limits referred to in ■ COLL 5.2.11 R on the basis of the underlying exposure created through the use of *OTC derivatives* in accordance with the commitment approach.
- (8) In relation to exposures arising from *OTC derivative* transactions, as referred to in ■ COLL 5.2.11R (10), the *authorised fund manager* must include in the calculation any *counterparty risk* relating to the *OTC derivative* transactions.

[Note: article 43 of the *UCITS implementing Directive*]

Spread: government and public securities

- (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* ("such securities") that is issued by:
 - (a) the *United Kingdom* or an *EEA State*;
 - (b) a local authority of the *United Kingdom* or an *EEA State*;
 - (c) a non-*EEA State*; or
 - (d) a public international body to which the *UK* or one or more *EEA States* belong.
- (2) Where no more than 35% in value of the *scheme property* is invested in such *securities* issued by any one body, there is no limit on the amount which may be invested in such *securities* or in any one issue.
- (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:
 - (a) the *authorised fund manager* has before any such investment is made consulted with the *depository* and as a result considers that the issuer of such *securities* is one which is appropriate in accordance with the investment objectives of the *authorised fund*;
 - (b) no more than 30% in value of the *scheme property* consists of such *securities* of any one issue;
 - (c) the *scheme property* includes such *securities* issued by that or another issuer, of at least six different issues; and
 - (d) the disclosures in ■ COLL 3.2.6R(8) (Table: contents of the instrument constituting the fund) and ■ COLL 4.2.5R(3)(i) (Table: contents of the prospectus) have been made.
- (4) [deleted]
- (5) In this *rule* in relation to such *securities*:
 - (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
 - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

- (6) Notwithstanding ■ COLL 5.2.11R (1) and subject to ■ (2) and ■ (3), in applying the 20% limit in ■ COLL 5.2.11R (10) with respect to a single body, such *securities* issued by that body shall be taken into account.

Investment in collective investment schemes

5.2.13

R

A *UCITS scheme* must not invest in *units* in a *collective investment scheme* ("second *scheme*") unless the second *scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in second *schemes* within (1)(b) to (e):

- (1) the second *scheme* must:
 - (a) be a *UCITS scheme* or satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or
 - (b) be a *recognised scheme* that is authorised by the *supervisory authorities* of Guernsey, Jersey or the Isle of Man (provided the requirements of ■ COLL 5.2.13AR are met); or
 - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of ■ COLL 5.2.13AR(1), (3) and (4) are met); or
 - (d) be authorised in an *EEA State* (provided the requirements of ■ COLL 5.2.13AR are met); or
 - (e) be authorised by the competent authority of an *OECD* member country (other than an *EEA State*) which has:
 - (i) signed the IOSCO Multilateral Memorandum of Understanding; and
 - (ii) approved the *scheme's* management company, rules and *depository/custody* arrangements;
 (provided the requirements of ■ COLL 5.2.13AR are met);
- (2) the second *scheme* must comply, where relevant, with ■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes);
- (3) the second *scheme* must have terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes*; and
- (4) where the second *scheme* is an *umbrella*, the provisions in (2) and (3) and ■ COLL 5.2.11 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

5.2.13A

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The requirements referred to in ■ COLL 5.2.13R(1) are that:

- (1) the second *scheme* is an undertaking:
 - (a) with the sole object of collective investment in *transferable securities* or in other liquid financial assets, as referred to in this chapter, of capital raised from the public and which operate on the principle of risk-spreading; and
 - (b) with *units* which are, at the request of holders, repurchased or *redeemed*, directly or indirectly, out of those undertakings' assets

(action taken by a *scheme* to ensure that the price of its *units* on an investment exchange does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or *redemption*);

- (2) the second *scheme* is authorised under laws which provide that they are subject to supervision considered by the *FCA* to be equivalent to that laid down in the law of the *United Kingdom*, and that cooperation between the *FCA* and the *supervisory authorities* of the second *scheme* is sufficiently ensured;
- (3) the level of protection for *unitholders* in the second *scheme* is equivalent to that provided for *unitholders* in a *UCITS scheme*, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of *transferable securities* and *approved money market instruments* are equivalent to the requirements of this chapter; and
- (4) the business of the second *scheme* is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

Qualifying non-UCITS collective investment schemes

5.2.14

G

- (1) ■ COLL 9.3 gives further detail as to the recognition of a *scheme* under section 272 of the *Act*.
- (2) A *scheme* which has the power to invest in gold or immovables would not meet the criteria set out in ■ COLL 5.2.13R (1).
- (3) In determining whether a *scheme* (other than a *UCITS*) meets the requirements of ■ COLL 5.2.13AR for the purposes of ■ COLL 5.2.13R (1), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:
 - (a) the rules guaranteeing the autonomy of the *scheme* and management in the exclusive interest of the *unitholders*;
 - (b) the existence of an independent *depository/custodian* with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent *depository/custodian* is not a requirement of local law as regards *collective investment schemes*, robust governance structures may provide a suitable alternative;
 - (c) the availability of pricing information and reporting requirements;
 - (d) redemption facilities and frequency;
 - (e) restrictions in relation to dealings by related parties;
 - (f) the extent of asset segregation; and
 - (g) the local requirements for borrowing, lending and uncovered sales of *transferable securities* and money market instruments regarding the portfolio of the *scheme*.

[Note: article 26 of *CESR's UCITS eligible assets guidelines* with respect to article 50(1)(e) of the *UCITS Directive*]

- (4) The requirement for supervisory equivalence, as described in ■ COLL 5.2.13AR(2), also applies to *schemes* (that are not *EEA UCITS schemes*) established in *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

Investment in associated collective investment schemes

5.2.15

R

- (1) A *UCITS scheme* must not invest in or dispose of *units* in another *collective investment scheme* (the *second scheme*) if the *second scheme* is managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *UCITS scheme* or an *associate* of that *authorised fund manager*, unless:
- (a) the *prospectus* of the investing *UCITS scheme* clearly states that the property of that investing *scheme* may include such *units*; and
 - (b) ■ COLL 5.2.16 R (Investment in other group schemes) is complied with.
- (2) Where a *sub-fund* of a *UCITS scheme* which is an *umbrella* invests in or disposes of *units* in another *sub-fund* of the same *umbrella* (the *second sub-fund*), the requirement in:
- (a) ■ COLL 5.2.15R (1)(a) is modified as follows - the *prospectus* of the *umbrella* must clearly state that the *scheme property* attributable to the investing or disposing *sub-fund* may include units in another *sub-fund* of the same *umbrella*; and
 - (b) ■ COLL 5.2.15R (1)(b) is modified as follows - ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "*UCITS scheme*" are taken to be references to the investing or disposing *sub-fund* and references to the "*second scheme*" are taken to be references to the *second sub-fund*.

5

Investment in other group schemes

5.2.16

R

- (1) Where:
- (a) an investment or disposal is made under ■ COLL 5.2.15 R; and
 - (b) there is a charge in respect of such investment or disposal;
- the *authorised fund manager* of the *UCITS scheme* making the investment or disposal must pay the *UCITS scheme* the amounts referred to in (2) or (3) within four *business days* following the date of the agreement to invest or dispose.
- (2) When an investment is made, the amount referred to in (1) is either:
- (a) any amount by which the consideration paid by the *UCITS scheme* for the *units* in the *second scheme* exceeds the price that would have been paid for the benefit of the *second scheme* had the *units* been newly issued or sold by it; or

- (b) if such price cannot be ascertained by the *authorised fund manager* of the *authorised fund*, the maximum amount of any charge permitted to be made by the seller of *units* in the second *scheme*.
- (3) When a disposal is made, the amount referred to in (1) is any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal.
- (4) In this *rule*:
 - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with ■ COLL 6.3.8 R (Dilution) is to be treated as part of the *price* of the *units* and not as part of any charge; and
 - (b) any charge made in respect of an exchange of *units* in one *sub-fund* or separate part of the second *scheme* for *units* in another *sub-fund* or separate part of that *scheme* is to be included as part of the consideration paid for the *units*.

Investment in nil and partly paid securities

- 5.2.17 **R** (1) [deleted]
- (2) A *transferable security* or an *approved money-market instrument* on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the *UCITS scheme*, at the time when payment is required, without contravening the *rules* in this chapter.

Investment in securitisation positions

- 5.2.17A **R** Where an *authorised fund manager* is exposed to a securitisation that does not meet the requirements provided for in *SECN* and, where applicable, the Securitisation Part of the *PRA Rulebook*, it must, in the best interests of the investors in the relevant *UCITS scheme*, act and take corrective action, if appropriate.

[Note: Article 50a of the *UCITS Directive*]

- 5.2.17B **G** ■ *SECN* 4 (Due diligence requirements) applies to *authorised fund managers* in combination with ■ COLL 5.2.17AR.

- 5.2.18 **R** [deleted]

Derivatives: general

- 5.2.19 **R** (1) A transaction in *derivatives* or a forward transaction must not be effected for a *UCITS scheme* unless:

- (a) the transaction is of a kind specified in ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards)); and
 - (b) the transaction is covered, as required by ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).
- (2) Where a *UCITS scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in ■ COLL 5.2.11 R (Spread: general) and ■ COLL 5.2.12 R (Spread: government and public securities) save as provided in (4).
- (3) Where a *transferable security* or *approved money-market instrument* embeds a *derivative*, this must be taken into account for the purposes of complying with this section.
- (3A) (a) A *transferable security* or an *approved money-market instrument* will embed a *derivative* if it contains a component which fulfils the following criteria:
- (i) by virtue of that component some or all of the cash flows that otherwise would be required by the *transferable security* or *approved money-market instrument* which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone *derivative*;
 - (ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
 - (iii) it has a significant impact on the risk profile and pricing of the *transferable security* or *approved money-market instrument*.
- (b) A *transferable security* or an *approved money-market instrument* does not embed a *derivative* where it contains a component which is contractually transferable independently of the *transferable security* or the *approved money-market instrument*. That component shall be deemed to be a separate instrument.
- [Note: article 10 of the *UCITS eligible assets Directive*]
- (4) Where a *scheme* invests in an index based *derivative*, provided the relevant index falls within ■ COLL 5.2.20AR (Financial indices underlying derivatives) the underlying constituents of the index do not have to be taken into account for the purposes of ■ COLL 5.2.11 R and ■ COLL 5.2.12 R.
- (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of ■ COLL 5.2.3 R (Prudent spread of risk).

Guidance on transferable securities and money-market instruments embedding derivatives

5.2.19A **G**

- (1) Collateralised debt obligations (CDOs) or asset-backed securities using *derivatives*, with or without an active management, will generally not be considered as embedding a *derivative* except if:

- (a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or
 - (b) they are not sufficiently diversified.
- (2) Where a *transferable security* or *approved money-market instrument* embedding a *derivative* is structured as an alternative to an *OTC derivative*, the requirements set out in ■ COLL 5.2.23 R with respect to transactions in *OTC derivatives* will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a *scheme*, which should be considered as embedding a *derivative*. Such a product offers an alternative to the use of an *OTC derivative*, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.
- (3) The following list of *transferable securities* and *approved money-market instruments*, which is illustrative and non-exhaustive, could be assumed to embed a *derivative*:
- (a) credit linked notes;
 - (b) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a bond index;
 - (c) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a basket of shares, with or without active management;
 - (d) *transferable securities* or *approved money-market instruments* with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;
 - (e) convertible bonds; and
 - (f) exchangeable bonds.
- (4) *Schemes* cannot use *transferable securities* or *approved money-market instruments* which embed a *derivative* to circumvent the rules in this section.
- (5) *Transferable securities* and *approved money-market instruments* which embed a *derivative* are subject to the rules applicable to *derivatives* as required by this section. It is the *authorised fund manager's* responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded *derivatives* and on their impact on the *scheme*, taking into account its stated investment objective and risk profile.

[Note: CESR's UCITS eligible assets guidelines with respect to article 10 of the UCITS eligible assets Directive]

Permitted transactions (derivatives and forwards)

5.2.20

R

- (1) A transaction in a *derivative* must:
 - (a) be in an *approved derivative*; or

- (b) be one which complies with ■ COLL 5.2.23 R (OTC transactions in derivatives).
- (2) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *scheme* is *dedicated*:
- (a) *transferable securities* permitted under ■ COLL 5.2.8 R (3)(a) to ■ (c) and ■ COLL 5.2.8 R (3)(e);
 - (b) *approved money-market instruments* permitted under ■ COLL 5.2.8 R (3)(a) to ■ COLL 5.2.8 R (3)(d);
 - (c) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
 - (d) *derivatives* permitted under this *rule*;
 - (e) *collective investment scheme* units permitted under ■ COLL 5.2.13 R (Investment in collective investment schemes);
 - (f) financial indices which satisfy the criteria set out in ■ COLL 5.2.20A R;
 - (g) interest rates;
 - (h) foreign exchange rates; and
 - (i) currencies.
- [Note: article 8(1)(a) of the *UCITS eligible assets Directive*]
- (3) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.
- (4) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the fund* and the most recently published *prospectus*.
- (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more *transferable securities, approved money-market instruments, units in collective investment schemes or derivatives* provided that a sale is not to be considered as uncovered if the conditions in ■ COLL 5.2.22R (1) (Requirement to cover sales), as read in accordance with the guidance at ■ COLL 5.2.22A G, are satisfied.
- (6) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (7) A *derivative* includes an instrument which fulfils the following criteria:
- (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
 - (b) it does not result in the delivery or the transfer of assets other than those referred to in ■ COLL 5.2.6A R (UCITS schemes: permitted types of scheme property) including cash;
 - (c) in the case of an *OTC derivative*, it complies with the requirements in ■ COLL 5.2.23 R (OTC transactions in derivatives);
 - (d) its risks are adequately captured by the risk management process of the *authorised fund manager*, and by its internal control mechanisms in the case of risks of asymmetry of information

between the *authorised fund manager* and the counterparty to the *derivative*, resulting from potential access of the counterparty to non-public information on *persons* whose assets are used as the underlying by that *derivative*.

[Note: article 8(2) of the *UCITS eligible assets Directive*]

(8) A *UCITS scheme* may not undertake transactions in *derivatives* on *commodities*.

[Note: article 8(5) of the *UCITS eligible assets Directive*]

Financial indices underlying derivatives

(1) The financial indices referred to in ■ COLL 5.2.20R (2)(f) are those which satisfy the following criteria:

- (a) the index is sufficiently diversified;
- (b) the index represents an adequate benchmark for the market to which it refers; and
- (c) the index is published in an appropriate manner.

(2) A financial index is sufficiently diversified if:

- (a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
- (b) where it is composed of assets in which a *UCITS scheme* is permitted to invest, its composition is at least diversified in accordance with the requirements with respect to spread and concentration set out in this section; and
- (c) where it is composed of assets in which a *UCITS scheme* cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

(3) A financial index represents an adequate benchmark for the market to which it refers if:

- (a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;
- (b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and
- (c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.

(4) A financial index is published in an appropriate manner if:

- (a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and
- (b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

- (5) Where the composition of underlyings of a transaction in a *derivative* does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to ■ COLL 5.2.20R (2), be regarded as a combination of those underlyings.

[Note: article 9 of the *UCITS eligible assets Directive*]

Guidance on financial indices underlying derivatives

5.2.20B

G

- (1) An index based on *derivatives* on *commodities* or an index on property may be regarded as a financial index of the type referred to in ■ COLL 5.2.20R (2)(f) provided it satisfies the criteria for financial indices set out in ■ COLL 5.2.20A R.
- (2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *UCITS scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in ■ COLL 5.3.3A R and spread set out in ■ COLL 5.2.11 R.
- (3) (a) In order to avoid undue concentration, where *derivatives* on an index composed of assets in which a *UCITS scheme* cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (b) If *derivatives* on that index are used for risk-diversification purposes, provided that the exposure of the *UCITS scheme* to that index complies with the 5%, 10% and 40% ratios required by ■ COLL 5.2.11R (4) and ■ (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

[Note: UCITS eligible assets guidelines with respect to article 9 of the *UCITS eligible assets Directive*]

- (3A) *Authorised fund managers* of *UCITS schemes* are advised that *UCITS schemes* should not be invested in commodity indices that do not consist of different commodities, as provided by paragraph 50 of *ESMA's* guidelines on ETFs and other UCITS issues (ESMA 2012/832)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf.

- (4) [deleted]

Transactions for the purchase of property

5.2.21

R

A *derivative* or forward transaction which will or could lead to the delivery of property for the account of the *UCITS scheme* may be entered into only if:

- (1) that property can be held for the account of the *UCITS scheme*; and

- (2) the *authorised fund manager* having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the *rules* in this sourcebook.

Requirement to cover sales

5.2.22

R

- (1) No agreement by or on behalf of a *UCITS scheme* to dispose of property or rights may be made unless:
 - (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the *UCITS scheme* by delivery of property or the assignment (or, in Scotland, assignation) of rights; and
 - (b) the property and rights at (a) are owned by the *UCITS scheme* at the time of the agreement.
- (2) Paragraph (1) does not apply to a *deposit*.
- (3) [deleted]
- (4) [deleted]

Guidance on requirement to cover sales

5.2.22A

G

- [deleted]
- (1) In the *FCA's* view the requirement in ■ COLL 5.2.22R (1)(a) can be met where:
 - (a) the risks of the underlying financial instrument of a *derivative* can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
 - (b) the *authorised fund manager* or the *depository* has the right to settle the *derivative* in cash, and cover exists within the *scheme property* which falls within one of the following asset classes:
 - (i) cash;
 - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
 - (iii) other highly liquid assets having regard to their correlation with the underlying of the financial *derivative* instruments, subject to appropriate safeguards (e.g. haircuts where relevant).
- (2) In the asset classes referred to in (1), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven *business days* at a price closely corresponding to the current valuation of the financial instrument on its own market.

OTC transactions in derivatives

5.2.23

R

A transaction in an *OTC derivative* under ■ COLL 5.2.20 R (1) (b) or, for the purposes of (1) only, executed by or on behalf of a *regulated money market fund*, must be:

- (1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
 - (a) an *eligible institution* or an *approved bank*;
 - (b) a *person* whose *permission* (including any *requirements* or *limitations*), as published in the *Financial Services Register*, permits it to enter into the transaction as *principal off-exchange*;
 - (c) a *CCP* that is authorised in that capacity for the purposes of *EMIR*;
 - (d) a *CCP* that is recognised in that capacity in accordance with the process set out in article 25 of *EMIR*; or
 - (e) to the extent not already covered above, a *CCP* supervised in a jurisdiction that:
 - (i) has implemented the relevant G20 reforms on over-the-counter derivatives to at least the same extent as the *United Kingdom*; and
 - (ii) is identified as having done so by the Financial Stability Board in its summary report on progress in implementation of G20 financial regulatory reforms dated 25 June 2019;
- (2) on approved terms; the terms of the transaction in *derivatives* are approved only if the *authorised fund manager*:
 - (a) carries out, at least daily, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value and which does not rely only on market quotations by the counterparty; and
 - (b) can enter into one or more further transactions to *sell*, liquidate or *close out* that transactions at any time, at its fair value ;
- (3) capable of reliable valuation; a transaction in *derivatives* is capable of reliable valuation only if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:
 - (a) on the basis of an up-to-date market value which the *authorised fund manager* and the *depository* have agreed is reliable; or
 - (b) if the value referred to in (a) is not available, on the basis of a pricing model which the *authorised fund manager* and the *depository* have agreed uses an adequate recognised methodology; and
- (4) subject to verifiable valuation; a transaction in *derivatives* is subject to verifiable valuation only if, throughout the life of the *derivative* (if the transaction is entered into) verification of the valuation is carried out by:
 - (a) an appropriate third party which is independent from the counterparty of the *derivative*, at an adequate frequency and in such a way that the *authorised fund manager* is able to check it; or
 - (b) a department within the *authorised fund manager* which is independent from the department in charge of managing the *scheme property* and which is adequately equipped for such a purpose.

[Note: articles 8(1)(b), 8(3) and 8(4) of the *UCITS eligible assets Directive*.

In relation to ■ COLL 5.2.23R(1)(e), see the table on page 3 of the Financial Stability Board’s report of 25 June 2019 which is available here: <https://www.fsb.org/wp-content/uploads/P250619-2.pdf>

5.2.23-A G The jurisdictions that fall within ■ COLL 5.2.23R(1)(e) are Australia, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Singapore, Spain, Switzerland, and the United States of America.

5.2.23A R For the purposes of ■ COLL 5.2.23 R (2), “fair value” is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.

5.2.23B R In respect of its obligations under ■ COLL 6.6.4 R (1) (a) , the *depository* must take reasonable care to ensure that the *authorised fund manager* has systems and controls that are adequate to ensure compliance with ■ COLL 5.2.23 R (1) to ■ (4).

Valuation of OTC derivatives

5.2.23C R

(1) For the purposes of ■ COLL 5.2.23 R (2), an *authorised fund manager* of a *UCITS scheme* must:

- (a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a *UCITS scheme* to *OTC derivatives*; and
- (b) ensure that the fair value of *OTC derivatives* is subject to adequate, accurate and independent assessment.

(2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the *authorised fund manager* must comply with the requirements in ■ SYSC 8.1.13 R (Additional requirements for a management company) and ■ COLL 6.6A.4 R (5) and ■ (6) (Due diligence requirements of AFMs of UCITS schemes).

(3) The arrangements and procedures referred to in this *rule* must be:

- (a) adequate and proportionate to the nature and complexity of the *OTC derivative* concerned; and
- (b) adequately documented.

[Note: article 51(1) second paragraph of the *UCITS Directive* and articles 44(2) and 44(4) of the *UCITS implementing Directive*]

5.2.24 R

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]

- 5.2.25 **G**
- (1) [deleted]
 - (2) [deleted]
 - (3) [deleted]
 - (4) [deleted]
 - (5) [deleted]
 - (6) [deleted]
 - (7) [deleted]
 - (8) [deleted]

Investment in deposits

5.2.26 **R** A UCITS scheme may invest in *deposits* only if it:

- (1) is with an *approved bank*;
- (2) is:
 - (a) repayable on demand; or
 - (b) has the right to be withdrawn; and
- (3) matures in no more than 12 *months*.

Significant influence for ICVCs

- 5.2.27 **R**
- (1) An *ICVC* must not acquire *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that *body corporate* if:
 - (a) immediately before the acquisition, the aggregate of any such *securities* held by the *ICVC* gives the *ICVC* power to influence significantly the conduct of business of that *body corporate*; or
 - (b) the acquisition gives the *ICVC* that power.
 - (2) For the purpose of (1), an *ICVC* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held by it, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

Significant influence for authorised fund managers of AUTs or ACSs

- 5.2.28 **R**
- (1) An *authorised fund manager* must not acquire, or cause to be acquired for an *AUT* or *ACS* of which it is the *authorised fund manager*, *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the *body corporate* if:

(a) immediately before the acquisition, the aggregate of any such *securities* held for that *AUT* or *ACS*, taken together with any such *securities* already held for other *AUTs* or *ACSs* of which it is also the *authorised fund manager*, gives the *authorised fund manager* power significantly to influence the conduct of business of that *body corporate*; or

(b) the acquisition gives the *authorised fund manager* that power.

(2) For the purpose of (1), an *authorised fund manager* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held for all the *AUTs* or *ACSs*, of which it is the *authorised fund manager*, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

Concentration

5.2.29

R

A *UCITS scheme*:

(1) must not acquire *transferable securities* (other than *debt securities*) which:

(a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and

(b) represent more than 10% of those *securities* issued by that *body corporate*;

(2) must not acquire more than 10% of the *debt securities* issued by any single body;

(3) must not acquire more than 25% of the *units* in a *collective investment scheme*;

(4) must not acquire more than 10% of the *approved money-market instruments* issued by any single body; and

(5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

UCITS schemes that are umbrellas

5.2.30

R

(1) In relation to a *UCITS scheme* which is an *umbrella*, the provisions in ■ COLL 5.2 to ■ COLL 5.5 apply to each *sub-fund* as they would for an *authorised fund*, except the following *rules* which apply at the level of the *umbrella* only:

(a) ■ COLL 5.2.27 R (Significant influence for ICVCs);

(b) ■ COLL 5.2.28 R (Significant influence for authorised fund managers of *AUTs* or *ACSs*); and

(c) ■ COLL 5.2.29 R (Concentration).

- (2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:
 - (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same *umbrella*;
 - (b) the conditions in ■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes) are complied with (for the purposes of this rule, ■ COLL 5.2.15 R and ■ COLL 5.2.16 R are to be read as modified by ■ COLL 5.2.15 R (2)); and
 - (c) the investing or disposing *sub-fund* must not be a *feeder UCITS* to the second *sub-fund*.

Schemes replicating an index

5.2.31

R

- (1) Notwithstanding ■ COLL 5.2.11 R (Spread: general), a *UCITS scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *scheme* as stated in the most recently published *prospectus* is to replicate the composition of a relevant index which satisfies the criteria specified in ■ COLL 5.2.33 R (Relevant indices).

- (1A) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of *efficient portfolio management*.

[Note: article 12(1) of the *UCITS eligible assets Directive*]

- (2) The limit in (1) can be raised for a particular *UCITS scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

Index replication

5.2.32

G

- (1) [deleted]
- (2) In the case of a *UCITS scheme* replicating an index under ■ COLL 5.2.31 R (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index in cases where the *scheme's* investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

Relevant indices

5.2.33

R

- (1) The indices referred to in ■ COLL 5.2.31 R are those which satisfy the following criteria:
 - (a) the composition is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.

- (2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.
- (3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;
 - (b) the index provider is independent from the index-replicating *UCITS scheme*; this does not preclude index providers and the *UCITS scheme* from forming part of the same *group*, provided that effective arrangements for the management of conflicts of interest are in place.

[Note: articles 12(2),(3) and (4) of the *UCITS eligible assets Directive*]

Disclosure requirements in relation to UCITS schemes that employ particular investment strategies

5.2.34

G

- (1) *Authorised fund managers* of *UCITS schemes* should bear in mind that where a *UCITS scheme* employs particular investment strategies such as those in (2), ■ COBS 4.13.2R (Marketing communications relating to UCITS schemes) and ■ COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.
- (2) Examples of investment strategies that require these additional disclosures include a *scheme*:
 - (a) investing more than 35% in value of its *scheme property* in *transferable securities* or *approved money-market instruments* specified in ■ COLL 5.2.12R (Spread: government and public securities); or
 - (b) investing principally in *units* in *collective investment schemes*, *deposits* or *derivatives*; or
 - (c) replicating an index.

Guidance on syndicated loans

5.2.35

G

- (1) A syndicated loan for the purposes of this *guidance* means a form of loan where a group or syndicate of parties lend *money* to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders' interest in the loan and arrange or act as a conduit for the interest payments. Whether an interest in a syndicated loan constitutes a *transferable security* or otherwise will depend on the terms of the relevant instrument. Where an *authorised fund manager* plans to invest *scheme property* in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.

- (2) To determine whether an interest in a syndicated loan would be an eligible investment for a *UCITS scheme* in accordance with ■ COLL 5.2, an *authorised fund manager* should first consider whether it constitutes a *transferable security* within the meaning of ■ COLL 5.2.7 R (Transferable securities) and ■ COLL 5.2.7AR (which implemented the additional eligibility criteria arising out of the *UCITS eligible assets Directive* that relate to liquidity, valuations and negotiability).
- (3) A *UCITS scheme* cannot lend money from its *scheme property*. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a *UCITS scheme* may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.
- (4) An instrument will not be a *transferable security* if it falls within one or more of the exclusions set out in article 77(2) of the *Regulated Activities Order*. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.
- (5) In the *FCA's* opinion, for an instrument to be classed as a *debenture* for the purposes of constituting a *transferable security* (see ■ COLL 5.2.7 R (1)(b)), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a *debenture* for these purposes.
- (6) In the *FCA's* view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of ■ COLL 5.2.7AR (1)(e) (Investment in transferable securities), so as to make it a permissible investment for a *UCITS scheme*. When *securities* are capable of being traded on a capital market, whether *on-exchange* or *off-exchange*, as a class and are fungible within their class, this would tend to indicate (unless the *AFM* was aware of specific evidence to the contrary) that they are negotiable.
- (7) The *FCA's* understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, *AFMs* should use similar analysis to determine whether or not interests in such loans are eligible investments for *UCITS schemes*.
- (8) Where a loan falls within the *Glossary* definition of a *transferable security*, investment in such a loan in the case of a *UCITS scheme* is subject to the spread requirements in ■ COLL 5.2.11 R (Spread: general). *AFMs* also need to bear in mind that where such a *transferable security* does not meet the requirements of ■ COLL 5.2.8 R (3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the *scheme's* overall exposure to such loans will count towards the limit in ■ COLL 5.2.8 R (4).

ESMA guidelines

5.2.36

G

Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

Guidelines concerning eligible assets for investment by UCITS: The classification of hedge fund indices as financial indices (CESR/07-434)

https://www.esma.europa.eu/sites/default/files/library/2015/11/07_434.pdf

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues (ESMA 2014/294).

https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf



5.3 Derivative exposure

Application

5.3.1 **R** This section applies to an *authorised fund manager* of a *UCITS scheme* and to an *ICVC* which is a *UCITS scheme*.

Introduction

5.3.2 **G** (1) A *scheme* may invest in *derivatives* and forward transactions as long as the exposure to which the *scheme* is committed by that transaction itself is suitably covered from within its *scheme property*. Exposure will include any *initial outlay* in respect of that transaction.

(2) Cover ensures that a *scheme* is not exposed to the risk of loss of property, including *money*, to an extent greater than the net value of the *scheme property*. Therefore, a *scheme* is required to hold *scheme property* sufficient in value or amount to match the exposure arising from a *derivative* obligation to which the *scheme* is committed. This section sets out detailed requirements for cover of a *scheme*.

(3) In accordance with **COLL 5.1.3 R (2)(b)** (Treatment of obligations), cover used in respect of one transaction in *derivatives* or forward transaction should not be used for cover in respect of another transaction in *derivatives* or a forward transaction.

5.3.3 **R** (1) [deleted]
 (2) [deleted]
 (3) [deleted]
 (4) [deleted]
 (5) [deleted]

Cover for investment in derivatives and forward transactions

5.3.3A **R** The *authorised fund manager* of a *UCITS scheme* must ensure that its global exposure relating to *derivatives* and forward transactions held in the *UCITS scheme* does not exceed the net value of the *scheme property*.

[Note: article 51(3) first paragraph of the *UCITS Directive*]

Daily calculation of global exposure

5.3.3B **R** An *authorised fund manager* of a *UCITS* scheme must calculate its global exposure on at least a daily basis.

[Note: article 41(2) of the *UCITS implementing Directive*]

5.3.3C **R** For the purposes of this section, exposure must be calculated taking into account the current value of the underlying assets, the *counterparty risk*, future market movements and the time available to liquidate the positions.

[Note: article 51(3) second paragraph of the *UCITS Directive*]

Guidance on cover

5.3.4 **G** (1) An *authorised fund manager* should note that the scope of **COLL 5.3.3C R** is extended in relation to underwriting commitments by **COLL 5.5.8 R (4)** (General power to accept or underwrite placings).

(2) Property the subject of a transaction under **COLL 5.4** (Stock lending) should not be considered as available for cover unless the *authorised fund manager* has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

Borrowing

5.3.5 **R** (1) Cash obtained from borrowing, and borrowing which the *authorised fund manager* reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, is not available for cover under **COLL 5.3.3A R** (Cover for investment in derivatives and forward transactions), except if (2) applies.

(2) Where, for the purposes of this section, the *ICVC* or the *depository* for the account of the *AUT* or *ACS* on the instructions of the *authorised fund manager*:

(a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and

(b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on *deposit* with the lender (or his agent or nominee);

then this section applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*.

5.3.6 **R** (1) [deleted]

(2) [deleted]

Calculation of global exposure

5.3.7 **R** An *authorised fund manager* must calculate the global exposure of any *UCITS* scheme it manages either as:

- (1) the incremental exposure and leverage generated through the use of *derivatives* and forward transactions (including embedded derivatives as referred to in ■ COLL 5.2.19R (3A) (Derivatives: general)), which may not exceed 100% of the net value of the *scheme property*; or
- (2) the *market risk* of the *scheme property*.

[Note: article 41(1) of the *UCITS implementing Directive*]

5.3.8

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- (1) An *authorised fund manager* must calculate the global exposure of a *UCITS scheme* by using:
 - (a) the commitment approach; or
 - (b) the value at risk approach.
- (2) An *authorised fund manager* must ensure that the method selected in (1) is appropriate, taking into account:
 - (a) the investment strategy pursued by the *UCITS scheme*;
 - (b) the types and complexities of the *derivatives* and forward transactions used; and
 - (c) the proportion of the *scheme property* comprising *derivatives* and forward transactions.
- (3) Where a *UCITS scheme* employs techniques and instruments including *repo* contracts or *stock lending* transactions in accordance with ■ COLL 5.4 (Stock lending) in order to generate additional leverage or exposure to *market risk*, the *authorised fund manager* must take those transactions into consideration when calculating global exposure.
- (4) For the purposes of (1), value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.

[Note: articles 41(3) and 41(4) of the *UCITS implementing Directive*]

Commitment approach

5.3.9

R

Where an *authorised fund manager* of a *UCITS scheme* uses the commitment approach for the calculation of global exposure, it must:

- (1) ensure that it applies this approach to all *derivative* and forward transactions (including embedded *derivatives* as referred to in ■ COLL 5.2.19R (3A) (Derivatives: general)), whether used as part of the *scheme's* general investment policy, for the purposes of risk reduction or for the purposes of *efficient portfolio management* in accordance with the *rules* of this chapter; and
- (2) convert each *derivative* or forward transaction into the market value of an equivalent position in the underlying asset of that *derivative* or forward (standard commitment approach).

[Note: articles 42(1) and 42(2) first paragraph of the *UCITS implementing Directive*]

5.3.10

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- (1) An *authorised fund manager* of a *UCITS scheme* may apply other calculation methods which are equivalent to the standard commitment approach.
- (2) An *authorised fund manager* may take account of netting and hedging arrangements when calculating global exposure of a *UCITS scheme*, where those arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.
- (3) Where the use of *derivatives* or forward transactions does not generate incremental exposure for the *UCITS scheme*, the underlying exposure need not be included in the commitment calculation.
- (4) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the *UCITS scheme* in accordance with **COLL 5.5.4 R** (General power to borrow) need not form part of the global exposure calculation.

[**Note:** articles 42(2) final paragraph, 42(3), 42(4) and 42(5) of the *UCITS implementing Directive*]

ESMA guidelines

5.3.11

G

Authorised fund managers of *UCITS schemes* are advised that *ESMA* has issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the rules in this section in relation to *UCITS schemes*:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)

https://www.esma.europa.eu/sites/default/files/library/2015/11/10_788.pdf

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA 2012/197)

<https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-197.pdf>

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf



5.4 Stock lending

Application

- 5.4.1 **R** (1) Subject to (2), this section applies to an *ICVC*, the *depository* of an *authorised fund* and an *authorised fund manager* in any case where the *authorised fund* is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) This section does not apply in any case where a *UCITS scheme* or a *non-UCITS retail scheme* is a *regulated money market fund*. The *Money Market Funds Regulation* sets out restrictions in relation to *stock lending* and *repo* contracts that apply in relation to *regulated money market funds*.

- 5.4.1A **G** ■ COLL 6.6B sets out additional *FCA rules* applicable to a *depository* of a *UCITS scheme* in relation to the re-use of *UCITS custodial assets*.

Permitted stock lending

- 5.4.2 **G** (1) This section covers techniques relating to *transferable securities* and *approved money-market instruments* which are used for the purpose of *efficient portfolio management*. It permits the generation of additional income for the benefit of the *authorised fund*, and hence for its investors, by entry into *stock lending* transactions for the account of the *authorised fund*.
- (2) The specific method of *stock lending* permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower otherwise than by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

Stock lending: general

- 5.4.3 **R** (1) An *authorised fund* may only enter into a *stock lending* arrangement or *repo* contract in accordance with the *rules* in this section if the arrangement or contract is:
- (a) for the account of and for the benefit of the *scheme*; and

5.4.4

R

(b) in the interests of its *unitholders*.

(2) An arrangement or contract in (1) is not in the interests of *unitholders* unless it reasonably appears to the *ICVC* or *authorised fund manager* of an *authorised fund* to be appropriate with a view to generating additional income for the *authorised fund* with an acceptable degree of risk.

Stock lending: requirements

(1) An *ICVC*, or the *depository* of an *authorised fund* acting in accordance with the instructions of the *authorised fund manager*, may enter into a *repo* contract, or a *stock lending* arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

(a) all the terms of the agreement under which *securities* are to be reacquired by the *depository* for the account of the *ICVC*, *AUT* or *ACS* are in a form which is acceptable to the *depository* and are in accordance with good market practice;

(b) the counterparty is:

(i) an *authorised person*; or

(ii) a *person* authorised by a *Home State regulator*; or

(iii) a *person* registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or

(iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives* by at least one of the following federal banking supervisory authorities of the United States of America:

(A) the Office of the Comptroller of the Currency;

(B) the Federal Deposit Insurance Corporation; and

(C) the Board of Governors of the Federal Reserve System; and

(D) [deleted]

(c) high quality and liquid *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the *collateral* is:

(i) acceptable to the *depository*;

(ii) adequate; and

(iii) sufficiently immediate.

(2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement referred to in (1)(a) to transfer to the *depository* the *securities* transferred by the *depository* under the *stock lending* arrangement or *securities* of the same kind.

(3) (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

5.4.5

G

Where a *stock lending* arrangement is entered into, the *scheme property* remains unchanged in terms of value. The *securities* transferred cease to be part of the *scheme property*, but there is obtained in return an obligation on the part of the counterparty to transfer back equivalent *securities*. The *depository* will also receive *collateral* to set against the risk of default in transfer, and that *collateral* is equally irrelevant to the valuation of the *scheme property* (because it is transferred against an obligation of equivalent value by way of re-transfer). ■ COLL 5.4.6 R accordingly makes provision for the treatment of the *collateral* in that context.

Treatment of collateral

5.4.6

R

- (1) *Collateral* is adequate for the purposes of this section only if it is:
 - (a) transferred to the *depository* or its agent;
 - (aa) for a *UCITS scheme*, received under a title transfer arrangement;
 - (ab) for a *UCITS scheme*, at all times equal in value to the market value of the *securities* transferred by the *depository* plus a premium;
 - (b) for a *non-UCITS retail scheme*, at all times at least equal in value to the value of the *securities* transferred by the *depository*; and
 - (c) for a *non-UCITS retail scheme*, in the form of one or more of:
 - (i) cash; or
 - (ii) [deleted]
 - (iii) a certificate of *deposit*; or
 - (iv) a letter of *credit*; or
 - (v) a *readily realisable security*; or
 - (vi) commercial paper with no embedded *derivative* content; or
 - (vii) a *qualifying money market fund*.
- (1A) Where the *collateral* is invested in *units* in a *qualifying money market fund* managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *scheme* or an *associate* of that *authorised fund manager*, the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with whether or not the investing *scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) *Collateral* is sufficiently immediate for the purposes of this section if:
 - (a) it is transferred before or at the time of the transfer of the *securities* by the *depository*; or
 - (b) the *depository* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (3) The *depository* must ensure that the value of the *collateral* at all times meets the requirement of either (1)(ab) or (1)(b), as appropriate.

- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire or has expired where the *depository* takes reasonable care to determine that sufficient *collateral* will again be transferred at the latest by the close of business on the *day* of expiry.
- (5) Any agreement for transfer at a future date of *securities* or of *collateral* (or of the equivalent of either) under this section may be regarded, for the purposes of valuation under ■ COLL 6.3 (Valuation and pricing) or this chapter, as an unconditional agreement for the *sale* or transfer of property, whether or not the property is part of the property of the *authorised fund*.
- (6) *Collateral* transferred to the *depository* is part of the *scheme property* for the purposes of the *rules* in this sourcebook, except in the following respects:
 - (a) it does not fall to be included in any valuation for the purposes of ■ COLL 6.3 or this chapter, because it is offset under (5) by an obligation to transfer; and
 - (b) it does not count as *scheme property* for any purpose of this chapter other than this section.
- (7) Paragraph (5) and (6)(a) do not apply to any valuation of *collateral* itself for the purposes of this section.

5.4.6A

G

As regards the *collateral* adequacy of a *UCITS scheme* and restrictions on *collateral* that take the form of cash for a *UCITS scheme*, *authorised fund managers* are referred to paragraph 43 of the *ESMA Guidelines* to competent authorities and *UCITS* management companies on *ETFs* and other *UCITS* issues (ESMA 2012/832)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Revision of the provisions on diversification of *collateral* in *ESMA's Guidelines* on *ETFs* and other *UCITS* issues (ESMA 2014/294)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf

Limitation by value

5.4.7

R

There is no limit on the value of the *scheme property* which may be the subject of *repo* contracts or *stock lending* transactions within this section.

Guidance relating to the use of cash collateral

5.4.8

G

- (1) The use of *stock lending* or the reinvestment of cash collateral should not result in a change of the *scheme's* declared investment objectives or add substantial supplementary risks to the *scheme's* risk profile.
- (2) Collateral taking the form of cash may only be invested in:
 - (a) one of the investments coming within ■ COLL 5.4.6 R (1) (c) (iii) to ■ (vii) (Treatment of collateral); or
 - (b) *deposits*, provided they:

- (i) are capable of being withdrawn within five *business days*, or such shorter time as may be dictated by the *stock lending* agreement; and
- (ii) satisfy the requirements of ■ COLL 5.2.26 R (1) (Investment in deposits).

5.4.9

G

Where a *scheme* generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the *scheme's* global exposure.

[Note: CESR's *UCITS eligible assets guidelines* with respect to article 11 of the *UCITS eligible assets Directive* (part)]

5.4.10

G

Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the rules in this section in relation to *UCITS schemes*:

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues (ESMA 2014/294)

https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf

5.5 Cash, borrowing, lending and other provisions

Application

- 5.5.1** **R** (1) Subject to (2), this section applies to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS*, and a *depository* of an *ICVC*, *AUT* or *ACS*, where such *ICVC*, *AUT* or *ACS* is a *UCITS* scheme as set out in ■ COLL 5.5.2R (Table of application).
- (2) Other than ■ COLL 5.5.3R and ■ COLL 5.5.9R, this section does not apply to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS*, or a *depository* of an *ICVC*, *AUT* or *ACS*, where such *ICVC*, *AUT* or *ACS* is a *regulated money market fund*.

Table of application

5.5.2 **R** This table belongs to ■ COLL 5.5.1 R.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Depository of an ICVC</i>	<i>Depository of an AUT or ACS</i>
5.5.3R		x	x		
5.5.4R(1) to (3)	x				x
5.5.4R(4)&(5)		x	x		
5.5.4R(6)				x	x
5.5.4R(7)	x	x	x	x	x
5.5.4R(8)	x				
5.5.5R(1) to (3)		x	x		
5.5.6R(1)&(2)	x		x		x
5.5.6R(3)	x				
5.5.7R(1)-(3)	x		x		x
5.5.7R(4)	x			x	x
5.5.8R	x	x	x		
5.5.9R	x			x	x
5.5.10G	x	x	x	x	x

Note: x means "applies"

Cash and near cash

5.5.3

R

- (1) Cash and *near cash* must not be retained in the *scheme property* except to the extent that this may reasonably be regarded as necessary in order to enable:
 - (a) the pursuit of the *scheme's* investment objectives; or
 - (b) *redemption* of *units*; or
 - (c) efficient management of the *authorised fund* in accordance with its investment objectives; or
 - (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the *authorised fund*.
- (2) During the period of the *initial offer* the *scheme property* may consist of cash and *near cash* without limitation.

General power to borrow

5.5.4

R

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund manager*) may, in accordance with this *rule* and ■ COLL 5.5.5 R (Borrowing limits), borrow *money* for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) Paragraph (1) is subject to the obligation of the *authorised fund* to comply with any restriction in the *instrument constituting the fund*.
- (3) The *ICVC* or *depository* of an *AUT* or *ACS* may borrow under (1) only from an *eligible institution* or an *approved bank*.
- (4) The *authorised fund manager* must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the *authorised fund manager* must have regard in particular to:
 - (a) the duration of any period of borrowing; and
 - (b) the number of occasions on which resort is had to borrowing in any period.
- (5) In addition to complying with (4), the *authorised fund manager* must ensure that no period of borrowing exceeds three *months*, whether in respect of any specific sum or at all, without the prior consent of the *depository*.
- (6) The *depository* may only give its consent as required under (5) on such conditions as appear to the *depository* appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
- (7) This *rule* does not apply to "back to back" borrowing under ■ COLL 5.3.5 R (2) (Borrowing).
- (8) An *ICVC* must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with (1) to (6)

Borrowing limits

- 5.5.5 **R**
- (1) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 10% of the value of the *scheme property*.
 - (2) This *rule* does not apply to "back to back" borrowing under ■ COLL 5.3.5 R (2)(Borrowing).
 - (3) In this *rule*, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of *money* into the *scheme property* in the expectation that the sum will be repaid.
 - (4) [deleted]

- 5.5.5A **G**
- An *authorised fund manager* should ensure when calculating the *authorised fund's* borrowing for ■ COLL 5.5.5R(1) that:
- (1) the figure calculated is the total of all borrowing in all currencies by the *authorised fund*; and
 - (2) long and short positions in different currencies are not netted off against each other.

Restrictions on lending of money

- 5.5.6 **R**
- (1) None of the *money* in the *scheme property* of an *authorised fund* may be lent and, for the purposes of this prohibition, *money* is lent by an *authorised fund* if it is paid to a *person* ("the payee") on the basis that it should be repaid, whether or not by the payee.
 - (2) Acquiring a *debenture* is not lending for the purposes of (1); nor is the placing of *money* on deposit or in a current account.
 - (3) Paragraph (1) does not prevent an *ICVC* from providing an *officer* of the *ICVC* with funds to meet expenditure to be incurred by him for the purposes of the *ICVC* (or for the purposes of enabling him properly to perform his duties as an *officer* of the *ICVC*) or from doing anything to enable an *officer* to avoid incurring such expenditure.

Restrictions on lending of property other than money

- 5.5.7 **R**
- (1) The *scheme property* of an *authorised fund* other than *money* must not be lent by way of deposit or otherwise.
 - (2) Transactions permitted by ■ COLL 5.4 (Stock lending) are not to be regarded as lending for the purposes of (1).
 - (3) The *scheme property* must not be mortgaged.
 - (4) Where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any of the *rules* in this chapter, nothing in this *rule* prevents the *ICVC* or the

depository at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund manager*, from:

- (a) lending, depositing, pledging or charging *scheme property* for *margin* requirements; or
- (b) transferring *scheme property* under the terms of an agreement in relation to *margin* requirements, provided that the *authorised fund manager* reasonably considers that both the agreement and the *margin* arrangements made under it (including in relation to the level of *margin*) provide appropriate protection to *unitholders*.

5.5.7A

G

An agreement providing appropriate protection to *unitholders* for the purposes of ■ COLL 5.5.7 R (4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

General power to accept or underwrite placings

5.5.8

R

- (1) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* applies, subject to compliance with any restriction in the *instrument constituting the fund*.
- (2) This *rule* applies to any agreement or understanding which:
 - (a) is an underwriting or sub-underwriting agreement; or
 - (b) contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *authorised fund*.
- (3) Paragraph (2) does not apply to:
 - (a) an *option*; or
 - (b) a purchase of a *transferable security* which confers a right to:
 - (i) subscribe for or acquire a *transferable security*; or
 - (ii) convert one *transferable security* into another.
- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:
 - (a) covered under ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions); and
 - (b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

Guarantees and indemnities

5.5.9

R

- (1) An *ICVC* or a *depository* for the account of an *authorised fund* must not provide any guarantee or indemnity in respect of the obligation of any *person*.

- (2) None of the *scheme property* of an *authorised fund* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.
- (3) Paragraphs (1) and (2) do not apply to:
 - (a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter; and
 - (b) for an *ICVC*:
 - (i) an indemnity falling within the provisions of regulation 62(3) of the *OEIC Regulations* (Exemptions from liability to be void);
 - (ii) an indemnity (other than any provision in it which is void under regulation 62 of the *OEIC Regulations*) given to the *depository* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and
 - (iii) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *ICVC* and the *holders* of *units* in that *scheme* become the first *unitholders* in the *ICVC*; and
 - (c) for an *AUT* or *ACS*, an indemnity given to a *person* winding up a body corporate or other *scheme* in circumstances where those assets are becoming part of the *scheme property* by way of a *unitisation*.

Guidance on restricting payments

5.5.10

G

■ COLL 6.7.15 R (Payment of liabilities on transfer of assets) and ■ COLL 6.7.4 R (Payments out of scheme property) contain provisions restricting payments out of *scheme property*.



5.6 Investment powers and borrowing limits for non-UCITS retail schemes

Application

5.6.1

R

- (1) Subject to (3), this section applies to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* and to an *ICVC* which is a *non-UCITS retail scheme*.
- (2) Where this section contains a reference to a *rule* in any of ■ COLL 5.1 to ■ COLL 5.5, these *rules* and any *rules* to which they refer or any relevant *guidance* should be read as if any reference to a *UCITS scheme* is to a *non-UCITS retail scheme*.
- (3) Other than ■ COLL 5.6.3R(1), ■ 5.6.4AG, ■ 5.6.14R, ■ 5.6.15R, ■ 5.6.22R(2), ■ 5.6.22R(3), ■ 5.6.22R(9) and ■ 5.6.24R, this section does not apply where the *non-UCITS retail scheme* in question is a *regulated money market fund*.

Explanation of ■ COLL 5.6

5.6.2

G

- (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements applicable to *UCITS schemes*.
- (2) Some examples of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* are the power to:
 - (a) invest not more than 10% of the value of *scheme property* in *transferable securities* or money-market instruments issued by any single body;
 - (b) invest in up to 20% in aggregate of the value of the *scheme property* in *transferable securities* which are not *approved securities* and *unregulated schemes*;
 - (c) invest in a wider range of *alternative investment funds*;
 - (d) include gold in the *scheme property* (up to a limit of 10% of the value of the *scheme property*);
 - (e) include immovables in the *scheme property*; and
 - (f) borrow on a non-temporary basis without any specific time limit as to repayment of the borrowing.

Prudent spread of risk

5.6.3

R

- (1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recently published *prospectus*, the *scheme property* of the *non-UCITS retail scheme* aims to provide a prudent spread of risk
- (1A) For a *feeder NURS*, (1) applies only to the extent that the *feeder NURS* invests in assets other than *units* of its *qualifying master scheme*.
- (2) Subject to (3) and (4), the *rules* in this section relating to spread of investments, including immovables, do not apply until 12 *months* after the later of:
 - (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
 - (b) the date the *initial offer* commenced;

provided that (1) is complied with during such period.
- (3) Subject to (4), the limits in ■ COLL 5.6.19 R do not apply until 24 *months* after the later of:
 - (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
 - (b) the date the *initial offer* commenced;

provided that (1) is complied with during such period.
- (4) The limit in ■ COLL 5.6.19 R (7) relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect and the date the *initial offer* period commenced.

Investment powers: general

5.6.4

R

- (1) The *scheme property* of a *non-UCITS retail scheme* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
- (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC's* business of investing in those assets or investments.
- (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that *non-UCITS retail scheme* and within any upper limit specified in this section.

- (4) The *instrument constituting the fund* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
 - (a) *transferable securities*;
 - (b) money-market instruments;
 - (c) *units* in *collective investment schemes* permitted under ■ COLL 5.6.10 R (Investment in collective investment schemes);
 - (d) *derivatives* and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
 - (e) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
 - (f) immovables permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
 - (g) gold up to a limit of 10% in value of the *scheme property*.

5.6.4A

G

Investment powers and limits for *non-UCITS retail schemes* that are regulated money market funds are set out in the *Money Market Funds Regulation*. Subject to complying with that Regulation, the *instrument constituting the fund* may further restrict:

- (1) the kind of money market instruments in which the *scheme property* may be invested;
- (2) the proportion of the *capital property* of the *non-UCITS retail scheme* to be invested in money market instruments of any description;
- (3) the descriptions of transactions permitted; and
- (4) the borrowing powers of the *non-UCITS retail scheme*.

Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme.....

5.6.5

R

Transferable securities and money-market instruments held within a *non-UCITS retail scheme* must:

- (1) (a) be admitted to or *dealt* in on an *eligible* market within ■ COLL 5.2.10 R (Eligible markets: requirements); or
- (b) be recently issued *transferable securities* which satisfy the requirements for investment by a *UCITS scheme* set out in ■ COLL 5.2.8 R (3)(e); or
- (c) be *approved money-market instruments* not admitted to or dealt in on an *eligible* market which satisfy the requirements for investment by a *UCITS scheme* set out in ■ COLL 5.2.10A R to ■ COLL 5.2.10C R; or
- (2) subject to a limit of 20% in value of the *scheme property* be:
 - (a) *transferable securities* which are not within (1); or

(b) money-market instruments which are liquid and have a value which can be determined accurately at any time.

5.6.5A **R** *Transferable securities* held within a *non-UCITS retail scheme* must also satisfy the criteria in **COLL 5.2.7A R**, **COLL 5.2.7C R** and **COLL 5.2.7E R** for the purposes of investment by a *UCITS scheme*.

5.6.5B **G** **COLL 5.2.7A R** to **COLL 5.2.7E R** contain *rules* and *guidance* relating to the criteria that need to be satisfied for the purposes of investment in *transferable securities*.

5.6.5C **R** [deleted]

5.6.5D **R** [deleted]

Funds investing in inherently illiquid assets (FIIA)

5.6.5E **G** (1) The *Glossary* definition of a *fund investing in inherently illiquid assets* (or *FIIA*) includes conditions relating to, amongst other things, the investment objectives of such *non-UCITS retail schemes* and the proportion of *scheme property* which is invested in *inherently illiquid assets*.

(2) Examples of such assets include:

- (a) property and real estate;
- (b) *shares* in a *special purpose vehicle* investing in infrastructure projects;
- (c) *shares* issued by a company that are not listed or admitted to trading; and
- (d) *units* in a *property authorised investment fund*.

Valuation

5.6.6 **R** In this section the value of the *scheme property* means the value of the *scheme property* determined in accordance with **COLL 5.2.5 R** (Valuation).

Spread: general

5.6.7 **R** (1) This *rule* does not apply in respect of a *transferable security* or an *approved money-market instrument* to which **COLL 5.6.8R** (Spread: government and public securities) applies.

(2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.

(3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or money-market instruments issued by any single body subject to **COLL 5.6.23 R** (Schemes replicating an index).

- (3A) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.
- (4) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying security.
- (5) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
- (6) Except for a *feeder NURS* or a *scheme dedicated to units* in a single *property authorised investment fund*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.
- (6A) *Schemes* which (in respect of investment in *units* in *collective investment schemes*) are *dedicated to units* in a single *property authorised investment fund* or *qualifying master scheme* must, in addition to the investment in the *property authorised investment fund* or *qualifying master scheme*, only hold cash or near cash to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. *Schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.
- (7) For the purpose of calculating the limit in (5), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (8).
- (8) The conditions referred to in (7) are that the collateral:
 - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
 - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
 - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
 - (d) can be fully enforced by the *non-UCITS retail scheme* at any time.
- (9) For the purpose of calculating the limit in (5), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
 - (a) comply with the conditions set out in Part Three, Title II, Chapter 6, Section 7(Contractual netting (Contracts for novation and other netting agreements)) of the *UK CRR* and
 - (b) are based on legally binding agreements.
- (10) In applying this rule, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
 - (a) it is backed by an appropriate performance guarantee; and
 - (b) it is characterised by a daily mark-to-market valuation of the *derivative* positions and an at least daily margining.

- (11) For the purposes of this *rule* a single body is:
- (a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and
 - (b) in relation to *deposits*, the *person* with whom they are placed.

Guidance on spread: general

5.6.7A

G

- (1) ■ COLL 5.6.7 R (7) to ■ (10) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable *non-UCITS retail schemes* to benefit from the same flexibility.
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in ■ COLL 5.6.7 R (8) under which the collateral has to be legally enforceable at any time. It is the FCA's view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The *depository* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under ■ COLL 6.6.4 R (General duties of the depository).
- (3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it on behalf of the *scheme*.

Spread: government and public securities

5.6.8

R

- (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* ("such securities") that is issued or guaranteed by:
 - (a) the UK or an EEA State; or
 - (b) a local authority of the UK or an EEA State; or
 - (c) a non-EEA State; or
 - (d) a public international body to which the UK or one or more EEA States belong.
- (2) The requirements in ■ COLL 5.2.12 R (Spread: government and public securities) apply to investment in such *securities* by a *non-UCITS retail scheme*, except for ■ COLL 5.2.12R(3)(d), which applies to such a *scheme* only to the extent that it concerns the most recently published *prospectus* of the *scheme*.

Investment in nil and partly paid securities

5.6.9

R

A *non-UCITS retail scheme* must not invest in nil and partly paid *securities* unless the investment complies with the conditions in ■ COLL 5.2.17 R (Investment in nil and partly paid securities).

Investment in collective investment schemes

5.6.10

R

A *non-UCITS retail scheme*, except for a *feeder NURS* (which must instead comply with ■ COLL 5.6.26 R), must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (5):

- (1) the second *scheme*:
 - (a) is a *UCITS scheme* or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or
 - (b) is a *non-UCITS retail scheme*; or
 - (c) is a *recognised scheme*; or
 - (d) is constituted outside the *United Kingdom* and the investment and borrowing powers of which are the same or more restrictive than those of a *non-UCITS retail scheme*; or
 - (e) is a *scheme* not falling within (a) to (d) and in respect of which no more than 20% in value of the *scheme property* (including any *transferable securities* which are not *approved securities*) is invested;
- (2) the second *scheme* operates on the principle of the prudent spread of risk;
- (3) the second *scheme* is prohibited from having more than 15% in value of the property of that *scheme* consisting of *units* in *collective investment schemes* (unless ■ COLL 5.6.10AR applies);
- (4) the *participants* in the second *scheme* must be entitled to have their *units* redeemed in accordance with the *scheme* at a *price*:
 - (a) related to the net value of the property to which the *units* relate; and
 - (b) determined in accordance with the *scheme*; and
- (5) where the second *scheme* is an *umbrella*, the provisions in (2) to (4) and ■ COLL 5.6.7 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

Investment in feeder schemes

5.6.10A

R

- (1) A *non-UCITS retail scheme* that is not a *feeder NURS* may, if the conditions in (2) to (5) are met, invest in *units* of:
 - (a) a *feeder UCITS*; or
 - (b) a *feeder NURS*; or
 - (c) a *scheme dedicated* to *units* in a single *property authorised investment fund*; or
 - (d) a *scheme dedicated* to *units* in a *recognised scheme*.
- (2) (a) The relevant *master UCITS* must comply with ■ COLL 5.2.13R(2), (3) and (4) as if it were the second *scheme* for the purpose of that *rule*.

- (b) The relevant *qualifying master scheme, property authorised investment fund or recognised scheme* must comply with ■ COLL 5.6.10R(2) to (5) as if it were the second *scheme* for the purpose of that *rule*.
- (3) Not more than 35% in value of the *scheme property* of the *non-UCITS retail scheme* may consist of *units* of one or more *schemes* permitted under (1)(a) to (d).
- (4) The *non-UCITS retail scheme* must not invest directly in *units* of the relevant *master UCITS, qualifying master scheme, property authorised investment fund or recognised scheme*.
- (5) The *authorised fund manager* of the *non-UCITS retail scheme* must be able to show on reasonable grounds that an investment in one or more *schemes* permitted under (1)(a) to (d) is:
 - (a) in the interests of investors; and
 - (b) no less advantageous than if the *non-UCITS retail scheme* had held *units* directly in the relevant:
 - (i) *master UCITS*; or
 - (ii) *qualifying master scheme*; or
 - (iii) *property authorised investment fund*; or
 - (iv) *recognised scheme*.

5.6.10B G When determining whether an investment is no less advantageous for ■ COLL 5.6.10AR(5)(b), an *authorised fund manager* should have regard in particular to:

- (1) the risk profile of the *non-UCITS retail scheme*;
- (2) the total costs borne by the *non-UCITS retail scheme*; and
- (3) the benefits to investors of investing in *units* of one or more *schemes* permitted under ■ COLL 5.6.10AR (1)(a) to (d).

5.6.10C G A *non-UCITS retail scheme* that is a *feeder NURS* is required to comply with ■ COLL 5.6.26R instead of ■ COLL 5.6.10AR.

Investment in associated collective investment schemes

5.6.11 R (1) *Units* in a *scheme* do not fall within ■ COLL 5.6.10 R if that *scheme* is managed or operated by (or, if it is an *ICVC*, has as its *ACD*) the *authorised fund manager* of the investing *non-UCITS retail scheme* or by an *associate* of that *authorised fund manager*, unless:

- (a) the *prospectus* of the investing *authorised fund* clearly states that the property of that investing fund may include such *units*; and
- (b) the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) are complied with.

- (2) Where a *sub-fund* of a *non-UCITS retail scheme* which is an *umbrella* invests in or disposes of *units* in another *sub-fund* of the same *umbrella* (the second *sub-fund*), the requirement in:
 - (a) ■ COLL 5.6.11 R (1)(a) is modified as follows - the *prospectus* of the *umbrella* must clearly state that the *scheme property* attributable to the investing or disposing *sub-fund* may include *units* in another *sub-fund* of the same *umbrella*; and
 - (b) ■ COLL 5.6.11 R (1)(b) is modified as follows - ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "*UCITS scheme*" are taken to be references to the investing or disposing *sub-fund* and references to the "*second scheme*" are taken to be references to the second *sub-fund*.

Derivatives: general

5.6.12

R

- (1) A transaction in *derivatives* or a forward transaction must not be effected for a *non-UCITS retail scheme* unless the transaction is:
 - (a) of a kind specified in ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards)); and
 - (b) covered, as required by ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).
- (2) Where a *scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in ■ COLL 5.6.7 R (Spread: general) and ■ COLL 5.6.8 R (Spread: government and public securities) except as provided in (4).
- (3) Where a *transferable security* or money-market instrument embeds a *derivative*, this must be taken into account for the purposes of calculating any limit in this section.
- (4) Where a *scheme* invests in an index-based *derivative*, provided the relevant index falls within ■ COLL 5.6.23 R (Schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of ■ COLL 5.6.7 R and ■ COLL 5.6.8 R.
- (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of ■ COLL 5.6.3 R (Prudent spread of risk).

Permitted transactions (derivatives and forwards)

5.6.13

R

- (1) A transaction in a *derivative* must be within ■ COLL 5.2.20 R (1) (Permitted transactions (derivatives and forwards)) and:
 - (a) the underlying must be within ■ COLL 5.6.4 R (5) (Investment powers: general) or ■ COLL 5.2.20R (2)(f) to ■ (i); and
 - (b) the exposure to the underlying must not exceed the limits in ■ COLL 5.6.7 R (Spread: general), ■ COLL 5.6.8 R (Spread: government and public securities) and ■ COLL 5.6.5 R (2).
- (2) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.

- (3) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the fund* and the most recently published *prospectus*.
- (4) transaction in a *derivative* must not be effected if the intended effect is to create the potential for an uncovered sale of:
 - (a) *transferable securities*;
 - (b) money-market instruments;
 - (c) *units in collective investment schemes*; or
 - (d) *derivatives*.
- (5) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (6) The *authorised fund manager* must ensure compliance with ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), ■ COLL 5.3.3B R and ■ COLL 5.3.3C R (Daily calculation of global exposure).

Transactions for the purchase or disposal of property

- 5.6.14 **R** The requirements of ■ COLL 5.2.21 R (Transactions for the purchase of property) and ■ COLL 5.2.22 R (Requirement to cover sales) apply to *non-UCITS retail schemes* in the same manner as to *UCITS schemes*.

OTC transactions in derivatives

- 5.6.15 **R** Any transaction in an *OTC derivative* under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards)) must comply with the requirements of ■ COLL 5.2.23 R (OTC transactions in derivatives).

Risk management

- 5.6.16 **R** An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated with a *non-UCITS retail scheme's* positions and their contribution to the overall risk profile of the *scheme*.

Risk management process

- 5.6.17 **G**
 - (1) The risk management process should take account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recent *prospectus*.
 - (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under ■ COLL 6.6.4 R (General duties of the depository) and ■ COLL 6.6.14 R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
 - (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *non-UCITS retail scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take

account of any characteristic of non-linear dependence in the value of a position to its underlying.

- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by ■ SYSC 4.1 (General requirements).
- (5) The risk management process should enable the analysis required by ■ COLL 5.6.16 R (Risk management) to be undertaken at least daily or at each *valuation point* whichever is the more frequent.

Investment in property

5.6.18

R

- (1) Any investment in land or a building held within the *scheme property* of a *non-UCITS retail scheme* must be an immovable within (2) to (5).
- (2) An immovable must:
 - (a) be situated in a country or territory identified in the *prospectus* for the purpose of this *rule*; and
 - (b) if situated in:
 - (i) England and Wales or Northern Ireland, be a freehold or leasehold interest; or
 - (ii) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
 - (c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the *scheme* and provides as good a title as any of the interests in (b)(i) or (ii).
- (3) The *authorised fund manager* must have taken reasonable care to determine that the title to the immovable is a good marketable title.
- (4) The *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must:
 - (a) have received a report from an *appropriate valuer* which:
 - (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
 - (ii) states that in the *appropriate valuer's* opinion the immovable would, if acquired by the *scheme*, be capable of being disposed of reasonably quickly at that valuation; or
 - (b) have received a report from an *appropriate valuer* as required by (4)(a)(i) and stating that:
 - (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property* or is another legal interest as defined in (2)(b) or (c) in an immovable which is already included in the *scheme property*; and
 - (ii) in the opinion of the *appropriate valuer*, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.
- (5) An immovable must:

- (a) be bought or be agreed by enforceable contract to be bought within six *months* after receipt of the report of the *appropriate valuer* under (4);
 - (b) not be bought, if it is apparent to the *authorised fund manager* that the report in (a) could no longer reasonably be relied upon; and
 - (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in (4).
- (6) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- (7) An *appropriate valuer* must be a *person* who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of a *non-UCITS retail scheme* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
 - (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *authorised fund manager* and *depository* of the *AUT* or *ACS*; and
 - (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

Investment in overseas property through an intermediate holding vehicle

5.6.18A

R

- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in that immovable.
- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

5.6.18B

G

- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
 - (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

- (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

Investment limits for immovables

5.6.19

R

The following limits apply in respect of immovables held as part of *scheme property of a scheme*:

- (1) not more than 15% in value of the *scheme property* is to consist of any one immovable;
- (2) in (1), immovables within ■ COLL 5.6.18 R (4) (b) (Investment in property) must be regarded as one immovable;
- (3) the figure of 15% in (1) may be increased to 25% once the immovable has been included in the *scheme property* in compliance with (1);
- (4) the income receivable from any one *group* in any accounting period must not be attributable to immovables comprising:
 - (a) more than 25%; or
 - (b) in the case of a government or public body more than 35% of the value of the *scheme property*;
- (5) not more than 20% in value of the *scheme property* is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in ■ COLL 5.6.18 R (4) (on the assumption the immovable is not mortgaged);
- (6) the aggregate value of:
 - (a) mortgages secured on immovables under (5);
 - (b) borrowing of the *scheme* under ■ COLL 5.6.22 R (5); and
 - (c) any *transferable securities* that are not *approved securities*; must not at any time exceed 20% of the value of the *scheme property*;

- (7) not more than 50% in value of the *scheme property* is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and
- (8) no option may be granted to a third party to buy any immovable comprised in the *scheme property* unless the value of the relevant immovable does not exceed 20% of the value of the *scheme property* together with, where appropriate, the value of investments in:
 - (a) *unregulated collective investment schemes*; and
 - (b) any *transferable securities* which are not *approved securities*.

Standing independent valuer and valuation

5.6.20

R

- (1) The following requirements apply in relation to the appointment of a valuer:
 - (a) the *authorised fund manager* must ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*; and
 - (b) the appointment must be made with the approval of the *depository* at the outset and upon any vacancy.
- (2) The standing independent valuer in (1) must be:
 - (a) for an *AUT* or *ACS*, independent of the *authorised fund manager* and *depository*; and
 - (b) for an *ICVC*, independent of the *ICVC*, the *directors* and the *depository*.
- (3) The following requirements apply in relation to the functions of the *standing independent valuer*:
 - (a) the *authorised fund manager* must ensure that the *standing independent valuer* values all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
 - (b) for the purposes of (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
 - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
 - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matters that appear likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a) instead of under (c);
 it must immediately inform the *standing independent valuer* of that matter;

- (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
- (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA of the RICS Valuation – Global Standards 2017, UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to ■ COLL 6.3 (Valuation and pricing).

(4) In relation to an immovable:

- (a) any valuation under ■ COLL 6.3 (Valuation and pricing) has effect, until the next valuation under that *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

5.6.20A **G** In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 5.6.20 R (3) (f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

Stock lending

5.6.21 **R** A *non-UCITS retail scheme* may undertake *stock lending* in accordance with ■ COLL 5.4 (Stock lending).

Cash, borrowing, lending and other provisions

5.6.22 **R** The following *rules* in Chapter 5 apply to a *non-UCITS retail scheme*:

- (1) ■ COLL 5.2.7 R (Transferable securities);
- (2) ■ COLL 5.5.1 R (Application) and ■ COLL 5.5.2 R (Table of application);
- (3) ■ COLL 5.5.3 R (Cash and near cash);
- (4) ■ COLL 5.5.4 R (1), ■ COLL 5.5.4 R (2), ■ COLL 5.5.4 R (3) and ■ COLL 5.5.4 R (8) (General power to borrow);
- (5) ■ COLL 5.5.5 R (1) and ■ COLL 5.5.5 R (2) (Borrowing limits);
- (6) ■ COLL 5.5.6 R (Restrictions on lending of money) ;
- (7) ■ COLL 5.5.7 R (1), ■ (2) and ■ (4) (Restrictions on lending of property other than money);

- (8) ■ COLL 5.5.8 R (General power to accept or underwrite placings); and
- (9) ■ COLL 5.5.9 R (Guarantees and indemnities).

Schemes replicating an index

5.6.23

R

- (1) A *non-UCITS retail scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the aim of the investment policy of that *scheme* as stated in its most recently published *prospectus* is to replicate the performance or composition of an index within (2).
- (2) The index must:
 - (a) have a sufficiently diversified composition;
 - (b) be a representative benchmark for the market to which it refers; and
 - (c) be published in an appropriate manner.
- (3) The limit in (1) may be raised for a particular *scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

5.6.23A

G

- (1) Replication of the composition of an index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments for the purpose of *efficient portfolio management*.
- (2) The composition of an index is sufficiently diversified if its components adhere to the spread requirements in this section.
- (3) An index is a representative benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;
 - (b) the index provider is independent from the index-replicating *scheme*; this does not preclude index providers and the *scheme* from forming part of the same *group*, provided that effective arrangements for the management of conflicts of interest are in place.

Non-UCITS retail schemes that are umbrellas

5.6.24

R

- (1) In relation to a *scheme* which is an *umbrella*, the provisions in this section apply to each *sub-fund* as they would for a *non-UCITS retail scheme*.
- (2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:
 - (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same *umbrella*;

- (b) the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) and ■ COLL 5.6.11 R (Investment in associated collective investment schemes) are complied with (for the purposes of this rule, ■ COLL 5.2.16 R and ■ COLL 5.6.11 R are to be read as modified by ■ COLL 5.6.11 R (2));
- (c) not more than 35% in value of the investing or disposing *sub-fund* is to consist of *units* of the second *sub-fund*; and
- (d) the investing or disposing *sub-fund* must not be a *feeder NURS* to the second *sub-fund*.

Guidance on syndicated loans

5.6.25

G

- (1) ■ COLL 5.2.35 G (Guidance on syndicated loans) is equally applicable to investment by a *non-UCITS retail scheme* in a syndicated loan.
- (2) Where a loan falls within the *Glossary* definition of a *transferable security*, investment in such a loan in the case of a *non-UCITS retail scheme* is subject to the spread requirements in ■ COLL 5.6.7 R (Spread: general). *AFMs* also need to bear in mind that where such a *transferable security* does not meet the requirements of ■ COLL 5.6.5 R (1) (Eligibility of transferable securities and money-market instruments for investment by a *non-UCITS retail scheme*), the *scheme's* overall exposure to such loans will count towards the limit in ■ COLL 5.6.5 R (2).

Qualifying collective investment schemes for feeder NURS

5.6.26

R

The *authorised fund manager* of a *feeder NURS* must ensure that the *feeder NURS* does not invest in the *qualifying master scheme*, unless the *qualifying master scheme* meets the requirements in (1) to (3):

- (1) the *qualifying master scheme*:
 - (a) is a *UCITS scheme* or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or
 - (b) is a *recognised scheme*; or
 - (c) is a *non-UCITS retail scheme*;
- (2) where the *qualifying master scheme* is an *umbrella*, the provisions in ■ COLL 5.6.7 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*; and
- (3) the *qualifying master scheme*:
 - (a) is not:
 - (i) a *feeder UCITS* or an *EEA UCITS scheme* or a *sub-fund* of an *EEA UCITS scheme* which has been approved by the *overseas regulator* of the *UCITS Home State* to invest at least 85% of its assets in the units of a single *EEA master UCITS*; or
 - (ii) a *feeder NURS*; or
 - (iii) otherwise *dedicated* to *units* in a single *collective investment scheme*; and
 - (b) does not hold *units* in:

- (i) a *feeder UCITS* or an *EEA UCITS scheme* or a *sub-fund* of an *EEA UCITS scheme* which has been approved by the overseas regulator of the *UCITS Home State* to invest at least 85% of its assets in the *units* of a single *EEA master UCITS*; or
- (ii) a *feeder NURS*; or
- (iii) a *scheme otherwise dedicated to units* in a single *collective investment scheme*.

5.6.27

R

An *EEA UCITS scheme* that is not a *recognised scheme* is not a *qualifying master scheme* for ■ COLL 5.6.26R(3) for a *pension feeder fund* that is a *feeder NURS*.



5.7 Investment powers and borrowing limits for NURS operating as FAIFs

Application

5.7.1

R

- (1) This section applies to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* operating as a *FAIF* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *FAIF*.
- (2) Where this section refers to:
 - (a) a *rule* or *guidance* in ■ COLL 5.1 to ■ COLL 5.6, these *rules* and *guidance*, and any *rules* and *guidance* to which they refer, must be read as if a reference to a *UCITS scheme* or *non-UCITS retail scheme* were a reference to a *non-UCITS retail scheme* operating as a *FAIF*;
 - (b) a second *scheme*, and the second *scheme* is a *feeder scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the *feeder scheme's* master *scheme* invests; and
 - (c) a second *scheme*, and the second *scheme* is a *master scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *non-UCITS retail scheme* operating as a *FAIF* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

Purpose

5.7.2

G

- (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* operating as *FAIFs* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements for *non-UCITS retail schemes* under ■ COLL 5.6 .
- (2) One example of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* operating as *FAIFs* is the power to invest up to 100% of the value of the *scheme property* in *schemes* to which ■ COLL 5.7.7 R (Investment in collective investment schemes) applies. A *non-UCITS retail scheme* operating as a *FAIF* is not able to hold more than 50% of its *scheme property* in *units* of *long-term asset funds* unless it operates *limited redemption arrangements* in accordance with ■ COLL 5.7.7R(3)(c) (Investment in

collective investment schemes) and ■ COLL 6.2.19R (Limited redemption).

- (3) In order to ensure adequate *unitholder* protection, the *authorised fund manager* is required to implement certain due diligence procedures in respect of investment in second *schemes*.

Applicable rules in COLL 5.6

5.7.3

R

The following *rules* and *guidance* in ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) apply to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* operating as a *FAIF* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *FAIF*:

- (1) ■ COLL 5.6.3 R;
- (2) ■ COLL 5.6.5 R to ■ 5.6.6 R;
- (3) ■ COLL 5.6.8 R to ■ 5.6.9 R; and
- (4) ■ COLL 5.6.11 R to ■ 5.6.24 R.

Investment powers: general

5.7.4

R

- (1) The *scheme property* of a *non-UCITS retail scheme* operating as a *FAIF* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
- (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC*'s business of investing in those assets or *investments*.
- (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that *non-UCITS retail scheme* operating as a *FAIF* and within any upper limit specified in this section.
- (4) The *instrument constituting the fund* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
 - (a) *transferable securities*;
 - (b) money market instruments;
 - (c) *units* in *collective investment schemes* permitted under ■ COLL 5.7.7 R (Investment in collective investment schemes);
 - (d) *derivatives* and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
 - (e) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);

- (f) immovables permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the *scheme property*.

Spread: general

5.7.5

R

- (1) This *rule* does not apply in respect of a *transferable security* or an *approved money-market instrument* to which ■ COLL 5.6.8R (Spread: government and public securities) applies.
- (2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body subject to ■ COLL 5.6.23 R (Schemes replicating an index).
- (4) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.
- (5) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (6) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
- (7) Except for a *feeder scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to the *units* of a *master scheme*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.
- (8) For the purpose of calculating the limit in (6), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (9).
- (9) The conditions referred to in (8) are that the collateral:
 - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
 - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
 - (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
 - (d) can be fully enforced by the *non-UCITS retail scheme* operating as a *FAIF* at any time.
- (10) For the purpose of calculating the limit in (6), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:

(a) comply with the conditions set out in Part Three, Title II, Chapter 6, Section 7(Contractual netting (Contracts for novation and other netting agreements)) of the *UK CRR* and

(b) are based on legally binding agreements.

(11) In applying this *rule*, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the *clearing house* meets each of the following conditions:

(a) it is backed by an appropriate performance guarantee; and

(b) it is characterised by a daily mark-to-market valuation of the *derivative* positions and an at least daily margining.

(12) For the purposes of this *rule* a single body is:

(a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and

(b) in relation to *deposits*, the *person* with whom they are placed.

Guidance on spread: general

5.7.6

G

(1) ■ COLL 5.7.5R (8) to ■ (11) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable *non-UCITS retail schemes* to benefit from the same flexibility.

(2) The attention of *authorised fund managers* is specifically drawn to condition (d) in ■ COLL 5.7.5R (9) under which the collateral has to be legally enforceable at any time. It is the *FCA's* view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The *depository* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under ■ COLL 6.6.4 R (General duties of the depository).

(3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it on behalf of the *scheme*.

Investment in collective investment schemes

5.7.7

R

(1) A *non-UCITS retail scheme* operating as a *FAIF* must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme*:

(a) is a *scheme* which satisfies the criteria in ■ COLL 5.6.10R(1)(a) to ■ (d);

(b) meets each of the requirements in (2)(a) to (d); or

(c) provided the conditions in (3) are satisfied, is a *long-term asset fund*.

- (2) A *non-UCITS retail scheme* operating as a *FAIF* may invest in a second *scheme* under this paragraph if:
- (a) the second *scheme* operates on the principle of the prudent spread of risk;
 - (b) the second *scheme* is prohibited from investing more than 15% in value of the property of that *scheme* in *units in collective investment schemes* or, if there is no such prohibition, the *non-UCITS retail scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made;
 - (c) the participants in the second *scheme* must be entitled to have their *units* redeemed in accordance with the *scheme* at a *price*:
 - (i) related to the net value of the property to which the *units* relate; and
 - (ii) determined in accordance with the *scheme*; and
 - (d) where the second *scheme* is an umbrella, the provisions in (2)(a) to (2)(c) above and ■ COLL 5.7.5R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

A *non-UCITS retail scheme* operating as a *FAIF* may invest in *units* in a second *scheme* which is a *long-term asset fund* provided:

- (a) the *long-term asset fund's* liquidity, *redemption* policy and *dealing* arrangements are sufficient for the *non-UCITS retail scheme* to be able to meet its obligations in respect of *redemptions*;
- (b) if relevant, the *authorised fund manager* ensures that the *non-UCITS retail scheme's* holdings of *units* of different *long-term asset funds* are diversified enough so that it can meet its obligations in respect of *redemptions*; and
- (c) where the *non-UCITS retail scheme* invests more than 50% of the value of the *scheme property* in *units* of second *schemes* that are *long-term asset funds*, the *non-UCITS retail scheme* operates *limited redemption arrangements* that:
 - (i) enable it to meet its obligations in respect of *redemptions*; and
 - (ii) are consistent with (a) and (b).

Investment in long-term asset funds: guidance

5.7.7A

G

- (1) Under ■ COLL 5.7.7R(3)(c), a *non-UCITS retail scheme* operating as a *FAIF* will need to operate *limited redemption arrangements* where it invests more than the 50% of the value of the *scheme property* in second *schemes* that are *long-term asset funds*. The *FCA* expects this to be where:
- (a) the investment objective and investment policy set out in the *non-UCITS retail scheme's prospectus* aim to invest at least 50% of the value of the *scheme property* in *units* of *long-term asset funds*; or
 - (b) at least 50% of the value of the *scheme property* of the *non-UCITS retail scheme* has been invested in *long-term asset funds* for at least 3 continuous *months* in the last 12 *months*.

- (2) (a) In order to comply with ■ COLL 5.7.7R(3), the *non-UCITS retail scheme's authorised fund manager* must be satisfied that the *long-term asset fund's liquidity, redemption policy and dealing arrangements* are sufficient for the *non-UCITS retail scheme* to be able to meet its own *redemption* obligations.
- (b) In determining whether (2)(a) is satisfied, the *authorised fund manager* should have regard to the liquidity of the other assets in which the *scheme property* is invested, particularly where such assets are *inherently illiquid assets*. This includes having regard to the *redemption policies and dealing arrangements* for other *second schemes* in which the *non-UCITS retail scheme* holds *units*.
- (3) In practice, and having regard to the liquidity of other assets, compliance with this *rule* may require the *non-UCITS retail scheme* to operate *limited redemption arrangements* even in circumstances where less than 50% of the value of the *scheme property* is invested in *second schemes* that are *long-term asset funds*.

Feeder scheme dedicated to units in a collective investment scheme

5.7.8

R

Feeder schemes which (in respect of investment in *units* in *collective investment schemes*) are *dedicated to units* in a single *collective investment scheme* must, in addition to the investment in the master *scheme*, only hold cash or *near cash* to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. *Feeder schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

Due diligence requirements

5.7.9

R

- (1) A *non-UCITS retail scheme* operating as a *FAIF* must not invest in *units* in *schemes* in ■ COLL 5.7.7R(2)(a) to ■ (2)(c) ('*second schemes*') unless the *authorised fund manager* has carried out appropriate due diligence on each of the *second schemes* and:
 - (a) is satisfied, on reasonable grounds and after making all reasonable enquiries, that each of the *second schemes* complies with relevant legal and regulatory requirements;
 - (b) has taken reasonable care to determine that:
 - (i) the property of each of the *second schemes* is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the *second scheme*;
 - (ii) the calculation of the net asset value of each of the *second schemes* and the maintenance of their accounting records is segregated from the investment management function; and
 - (iii) each of the *second schemes* is regularly audited by an independent auditor in accordance with international standards on auditing.
- (2) The *authorised fund manager* of a *non-UCITS retail scheme* operating as a *FAIF* invested in one or more *second schemes* must carry out

appropriate due diligence as detailed in (1) on those *schemes* on an ongoing basis.

5.7.10 **R** The *authorised fund manager* of a *non-UCITS retail scheme* operating as a *FAIF* which is a *feeder scheme* must ensure that:

- (1) its *master scheme*; and
- (2) where its *master scheme* is itself a *feeder scheme*, any *scheme* into which that *master scheme* invests;

operates on a basis that is consistent with the *rules* in this section notwithstanding any due diligence previously carried out which suggested that those *schemes* would so operate.

5.7.11 **G** An *authorised fund manager* carrying out due diligence for the purpose of the *rules* in this section should make enquiries or otherwise obtain information needed to enable him properly to consider:

- (1) whether the experience, expertise, qualifications and professional standing of the second *scheme's* investment manager is adequate for the type and complexity of the second *scheme*;
- (2) the adequacy of the regulatory, legal and accounting regimes applicable to the second *scheme* and its investment manager;
- (3) whether the second *scheme*, its investment manager and administrator have complied with their legal and regulatory obligations, including but not limited to an evaluation of the investment manager's written policies with respect to such compliance;
- (4) the extent to which the second *scheme's* investment manager adheres to guidance and codes which amount to good practice in the industry;
- (5) the adequacy of the second *scheme's* systems, controls, governance, accounting, administration, business continuity, disaster recovery, safekeeping, custody and trading and execution arrangements;
- (6) the extent to which the property of the second *scheme* may be rehypothecated and the potential impact of such rehypothecation on the *non-UCITS retail scheme* operating as a *FAIF*;
- (7) the adequacy of the second *scheme's* risk management process, in particular:
 - (a) the methodology by which risk is measured and its practical adequacy in the light of the limitations inherent in risk measures (such as value at risk), including where appropriate, reference to market risk, credit risk (including counterparty credit risk), liquidity risk, operational risk and outsourcing risk;
 - (b) the extent to which the second *scheme's* investment manager carries out stress testing and backtesting, to determine how potential changes in market conditions could impact on the value of the second *scheme's* portfolio;

- (c) the reporting, escalation and review processes within the second *scheme's* governance structure;
- (d) the manner in which risks arising from services provided by third parties are managed, including where those third parties provide prime brokerage, administration, auditing, valuation, risk monitoring, business continuity and disaster recovery services; and
- (e) the management of key person risk;
- (8) the adequacy of the second *scheme's* investment strategy and trading philosophy;
- (9) the implications of currency convertibility (if any);
- (10) whether the second *scheme* produces a valuation that is sufficiently accurate for the *authorised fund manager* to be reasonably satisfied that the price of the *FAIF's units* can be calculated in accordance with ■ COLL 6.3 (Valuation and pricing), including but not limited to an assessment of:
 - (a) the roles and responsibilities of each of the parties involved in the second *scheme's* valuation process and the extent to which these are defined;
 - (b) the extent to which the valuation process is segregated or is functionally separate from the second *scheme's* investment manager where the second *scheme* is not subject to completely independent valuation by a third party;
 - (c) the methods used by the second *scheme* for the valuation of each part of its property including those assets which are difficult to value or which are not subject to independent market pricing;
 - (d) the extent to which the investment manager of the second *scheme* does not rely on prices from external sources, and its written policies relating to this;
 - (e) the manner in which the investment manager of the second *scheme* selects and monitors the adequacy of its pricing sources;
 - (f) the extent to which the investment manager of the second *scheme* operates a valuation policy that is consistent and fair to both subscribing and redeeming investors from the second *scheme*;
- (11) the level of liquidity, redemption policy and *dealing* arrangements offered by the second *scheme* and whether they are sufficient for the investing *scheme* to be able to meet its obligations in respect of redemptions; wherever appropriate the *authorised fund manager* may need to consider how many second *schemes* the investing *scheme* should invest in to ensure that that *scheme* can meet its redemption obligations; and
- (12) any relevant conflicts of interest that may arise out of the relationships of the second *scheme's* investment manager with other relevant parties and in particular detract from the integrity of the second *scheme's* decision-making process, including:
 - (a) relationships with brokers or service providers;
 - (b) conflicts that may be generated by fee structures;

- (c) use of dealing commission to purchase goods or services;
- (d) conflicts that may arise from the second *scheme's* investment manager managing that *scheme* alongside other business; and
- (e) the conflicts of interest that may arise (if any) between the second *scheme's* investment manager and any *person* instructed to carry out due diligence on the *authorised fund manager's* behalf.

Non-UCITS retail schemes that are umbrellas with FAIF sub-funds

5.7.12

R

In relation to a *non-UCITS retail scheme* which is an *umbrella* comprised of *sub-funds* which are:

- (1) *FAIFs*; or
- (2) a mixture of *FAIFs* and standard *non-UCITS retail schemes*;

the provisions in this section apply to each *sub-fund* operating as a *FAIF* as they would to a separate *scheme*.

5.8 Investment powers and borrowing limits for feeder UCITS

Application

- 5.8.1 **R** (1) This section applies to:
- (a) the *authorised fund manager* of a *feeder UCITS*;
 - (b) the *depository* of a *feeder UCITS*; and
 - (c) an *ICVC* which is a *feeder UCITS*;
- where the *scheme* is a *UCITS scheme*.
- (2) Where this section refers to a *rule* or *guidance* in ■ COLL 5.1 to ■ COLL 5.5, those *rules* and *guidance*, and any *rules* and *guidance* to which they refer, must be read as if a reference to a *UCITS scheme* were a reference to a *feeder UCITS*.
- (3) Where the *sub-fund* of a *UCITS scheme* is a *feeder UCITS*, the provisions in this section apply to each *sub-fund* as they would for an *authorised fund*.

Permitted types of scheme property

- 5.8.2 **R** A *feeder UCITS* must invest at least 85% in value of the *scheme property* in *units* of a single *master UCITS*.

[Note: article 58(1) of the *UCITS Directive*]

- 5.8.2A **R** The *authorised fund manager* of a *pension feeder fund* that is a *feeder UCITS* must ensure that the single *master UCITS* is:

- (1) a *UCITS scheme*; or
- (2) an *EEA UCITS scheme* that is a *recognised scheme*.

Balance of scheme property: investment restrictions on a feeder UCITS

- 5.8.3 **R** A *feeder UCITS* may hold up to 15% in value of the *scheme property* in one or more of the following:
- (1) cash or *near cash* in accordance with ■ COLL 5.5.3 R (Cash and near cash);

(2) *derivatives* and forward transactions which may be used only for the purposes of hedging and in accordance with the *rules* set out at ■ COLL 5.8.7 R (Other provisions applicable to a feeder UCITS); and

(3) (for an *ICVC*) movable and immovable property which is essential for the direct pursuit of the business.

[Note: article 58(2) first subparagraph of the *UCITS Directive*]

Exposure to derivatives

5.8.4

R

In calculating the global exposure of a *feeder UCITS* to *derivatives* and forward transactions in accordance with ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), the *feeder UCITS* must combine its own direct exposure under ■ COLL 5.8.3R (2) with either:

(1) the *master UCITS*' actual exposure to *derivatives* and forward transactions in proportion to the *feeder UCITS*' investment into the *master UCITS*; or

(2) the *master UCITS*' potential maximum global exposure to *derivatives* and forward transactions provided for in the *master UCITS*' *instrument constituting the fund* or its *prospectus* in proportion to the *feeder UCITS* investment into the *master UCITS*.

[Note: article 58(2) second subparagraph of the *UCITS Directive*]

Prudent spread of risk

5.8.5

R

An *authorised fund manager* must ensure that, to the extent that the *feeder UCITS* invests in assets other than *units* of a *master UCITS*, the *feeder UCITS* complies with ■ COLL 5.2.3 R (1) (Prudent spread of risk).

Investment powers: general

5.8.6

R

The *scheme property* of a *feeder UCITS* must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the *instrument constituting the fund* may restrict the investment and borrowing powers of a *scheme* further than the relevant restrictions in this section.

Other provisions applicable to a feeder UCITS

5.8.7

R

The following *rules* and *guidance* in ■ COLL 5.1 (Introduction), ■ COLL 5.2 (General investment powers and limits for UCITS schemes) and ■ COLL 5.5 (Cash, borrowing, lending and other provisions) apply to the *authorised fund manager* of a *UCITS scheme* which is a *feeder UCITS* and to an *ICVC* which is a *feeder UCITS*:

(1) ■ COLL 5.1.1 R (Application), ■ COLL 5.1.2G (1) (Purpose) and ■ COLL 5.1.3 R (Treatment of obligations);

(2) ■ COLL 5.2.1 R (Application), ■ COLL 5.2.2 R (Table of application) and ■ COLL 5.2.2A G;

(3) ■ COLL 5.2.5 R (Valuation) and ■ COLL 5.2.6 G (Valuation guidance);

- (4) ■ COLL 5.2.10 R (Eligible markets: requirements);
- (5) ■ COLL 5.2.11R (7) (Spread: general);
- (6) ■ COLL 5.2.11B R (Counterparty risk and issuer concentration);
- (7) ■ COLL 5.2.15R (1) (Investment in associated collective investment schemes);
- (8) ■ COLL 5.2.19 R (1), ■ COLL 5.2.19 R (2) and ■ COLL 5.2.19R (4) (Derivatives: general);
- (9) ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards));
- (10) ■ COLL 5.2.20A R (Financial indices underlying derivatives), ■ COLL 5.2.20BG (1) and ■ COLL 5.2.20BG (4) (Guidance on financial indices underlying derivatives);
- (11) ■ COLL 5.2.21 R (Transactions for the purchase of property);
- (12) ■ COLL 5.2.22 R (Requirement to cover sales) and ■ COLL 5.2.22A G (Guidance on requirement to cover sales);
- (13) ■ COLL 5.2.23 R (OTC Transactions in derivatives), ■ COLL 5.2.23A R and ■ COLL 5.2.23B R);
- (14) ■ COLL 5.2.23C R (Valuation of OTC derivatives);
- (15) ■ COLL 5.2.26 R (Investment in deposits);
- (16) ■ COLL 5.5.1 R to ■ COLL 5.5.7A G (Cash, borrowing, lending and other provisions); and
- (17) ■ COLL 5.5.9 R (Guarantees and indemnities) and ■ COLL 5.5.10 G (Guidance on restricting payments).

Chapter 6

Operating duties and responsibilities

6.1 Introduction and Application

Application

6.1.1

R

This chapter applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

6.1.2

G

This chapter helps in achieving the *statutory objective* of protecting *consumers*. It provides the operating framework within which the *authorised fund* must be operated on a day-to-day basis to ensure that *clients* are treated fairly when they become, remain or as they cease to be *unitholders*.

Explanation of this chapter

6.1.3

G

- (1) The *authorised fund manager* operates the *scheme* on a day-to-day basis. Its operation is determined by the *rules* in this chapter, which require appropriate powers in the *instrument constituting the fund* or refer to the need to state the relevant operating procedures in the *prospectus* of the *scheme*.
- (2) (a) The *authorised fund manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*.
 (b) The *rules* in this chapter set out the parameters of such delegation, except in relation to a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, where this chapter supplements ■ FUND 3.10 (Delegation).
- (3) The *depository's* duty is, generally speaking, to ensure the safe custody of *scheme property* and to oversee certain functions of the *authorised fund manager* (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a *trustee* of an *AUT* are similar to, but not the same as, the oversight responsibilities of the *depository* of an *ICVC* or *ACS*. These differences result from the different legal structure of the *authorised funds* and the *trustee's* obligations under trust law.



6.2 Dealing

Application

- 6.2.1 **R** (i) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.

Purpose

- 6.2.2 **G**
- (1) This section helps in achieving the *statutory objective* of securing an appropriate degree of protection for *consumers*. In accordance with *Principle 6*, this section is also concerned with ensuring the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
 - (2) An *authorised fund manager* of an *AUT*, *ACS* or *ICVC* is responsible for arranging for the *issue* and the *cancellation* of *units* for the *authorised fund*. An *authorised fund manager* of an *AUT*, *ICVC* or *co-ownership scheme* is permitted to *sell* and *redeem units* for its own account. An *authorised fund manager* of a *limited partnership scheme* is only permitted to *sell* and *redeem units* as agent for the *scheme*. The *rules* in this section are intended to ensure that the *authorised fund manager* treats the *authorised fund* fairly when arranging for the *issue* or *cancellation* of *units*, and treats *clients* fairly when they purchase or *sell units*.
 - (3) This section also sets out common standards for how the amounts in relation to *unit* transactions are to be paid. These arrangements include the *initial offer* of *units*, the exchange of *units* for *scheme property* and *issues* and *cancellations* of *units* by an *ICVC*, or by the *depository* of an *AUT* or *ACS*, carried out directly with the *unitholder*.
 - (4) This section also sets out *rules* and *guidance* relating to the *authorised fund manager's* controls over the *issue* and *cancellation* of *units* including any box holdings.
 - (5) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*.

Initial offers

- 6.2.3 **R** (1) During the *initial offer* period, *units* may only be issued at the *initial price*.

- (2) The length of any *initial offer* should not be unreasonable when considered alongside the characteristics of the *authorised fund*.
- (3) The *authorised fund manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *depository* in respect of any *unit* it has agreed to *sell* during the period of the *initial offer*:
 - (a) in the case of a *single-priced authorised fund*, the *initial price* of that *unit*; or
 - (b) in the case of a *dual-priced authorised fund*, the *initial price* of that *unit* less, where relevant, an amount not exceeding the amount of any *preliminary charge* stated in the *prospectus*.
- (4) The period of the *initial offer* comes to an end if the *authorised fund manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

Initial offer: guidance

- 6.2.4 G
 - (1) Details of any *initial offer* period must be provided in the relevant *prospectus* as described in ■ COLL 4.2.5R (17)(h) (Table: contents of the prospectus).
 - (2) It may be appropriate that the *initial offer* for a *scheme* operating limited *issue* or *limited redemption arrangements*, or intending to invest in illiquid assets, is longer than one for a *scheme* which does not have these features.

Issue and cancellation of units by an ICVC

- 6.2.5 R
 - (1) *Units* in an *ICVC* are *issued* or *cancelled* by the *ACD* making a record of the *issue* or *cancellation* and of the number of the *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless ■ COLL 3.2.6R (11) (Table: contents of the instrument constituting the fund) applies.
 - (2) The time of the *issue* or *cancellation* under (1) is the time when the record is made.

Issue and cancellation of units in an AUT or ACS

- 6.2.6 R
 - (1) The *depository* must *issue* or *cancel units* in an *AUT* or *ACS* when instructed by the *authorised fund manager*.
 - (2) Any instructions given by the *authorised fund manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).
 - (3) If the *depository* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancelled* or that to do so would not be in accordance with the *trust deed*, *contractual scheme deed* or *prospectus*, it must notify the *authorised fund*

manager of that fact and it is then relieved of the obligation to *issue* or *cancel* those *units*.

Issue and cancellation of units in multiple classes

6.2.6A

R

If an *authorised fund* has two or more *classes* of *unit* in issue, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Issue and cancellation of units through an authorised fund manager

6.2.7

R

- (1) The *authorised fund manager* may require, on agreement with the *depository*, or may permit, on the request of the investor, direct *issues* and *cancellations* of *units* by an *ICVC* or by the *depository* of an *AUT* or *ACS*.
- (2) If (1) applies:
 - (a) the *instrument constituting the fund* must provide for this; and
 - (b) the *prospectus* must provide details of the procedure to be followed which must be consistent with the *rules* in this section.

Controls over the issue and cancellation of units

6.2.8

R

- (1) An *authorised fund manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.
- (2) An *authorised fund manager* must not:
 - (a) for an *AUT* or *ACS*, when giving instructions to the *depository* for the *issue* or *cancellation* of *units*; or
 - (b) for an *ICVC*, when arranging for the *issue* or *cancellation* of *units*; do, or omit to do, anything that would, or might, confer on itself or an *associate* a benefit or advantage at the expense of a *unitholder* or a potential *unitholder*.
- (3) For the purpose of (1), the *authorised fund manager* may take into account instructions to *redeem units* at the following *valuation point* received before any time agreed with the *depository* for such purpose.

Controls over the issue and cancellation of units - guidance

6.2.9

G

- (1) As the *authorised fund manager* normally controls the *issue, cancellation, sale and redemption* of an *authorised fund's units*, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its *clients*.
- (2) ■ SYSC 3.1.1 R (Systems and controls) requires that a *firm* take reasonable care to establish and maintain such systems and controls as are appropriate to its business and *Principle 8* requires a *firm* to manage conflicts of interest between itself and a *customer* fairly.
- (3) To manage the conflict of interest that arises, when an *authorised fund manager* gives an instruction to *issue or cancel units*, the *price* of the *units* should be calculated at the *valuation point* before or after the instruction has been given, in accordance with (4).
- (4) An *authorised fund manager* should agree a period of time with the *depository* during which it will give instructions to *issue or cancel units*. Where the *authorised fund manager* operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next *valuation point* but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.
- (5) The last *valuation point* should be used for the pricing of *units* where instructions are given before the expiry of the period of time agreed in (4); otherwise the next *valuation point* should be used.
- (6) Where an in specie *issue or cancellation* occurs it should be undertaken using the next *valuation point's price*.

Modification to number of units issued or cancelled

6.2.10

R

- (1) Any instruction for the *issue or cancellation of units* under ■ COLL 6.2.5 R (Issue and cancellation of units by an ICVC) or ■ COLL 6.2.6 R (Issue and cancellation of units in an AUT or ACS) may be modified but only if the *depository* agrees and has taken reasonable care to determine that:
 - (a) the modification corrects an error in the instruction; and
 - (b) the error is an isolated one.
- (2) Any error in (1) must be corrected within the payment period applicable under ■ COLL 6.2.13 R (Payment for units issued) or ■ COLL 6.2.14 R (Payment for cancelled units).

Compensation for box management errors

6.2.11

R

- (1) Where the *authorised fund manager* has not complied with ■ COLL 6.2.8 R (1) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.
- (2) The *authorised fund manager* need not reimburse the *authorised fund* when:

- (a) the amount under (1) is not, in the *depository's* opinion, material to the *authorised fund*;
- (b) the *authorised fund manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
- (c) the requirements of ■ COLL 6.2.10 R (Modification to number of units issued or cancelled) are complied with.

Box management errors guidance

6.2.12

G

Explanatory table: This table belongs to ■ COLL 6.2.2 G (4) (Purpose).

Correction of box management errors

1 Controls by authorised fund managers

An authorised fund manager needs to be able to demonstrate that it has effective controls over:

- (1) its calculations of what *units* are owned by it (its 'box'); and
- (2) compliance with COLL 6.2.8 R which is intended to prevent a negative box.

2 Controls by depositaries

- (1) Under COLL 6.6.4 (General duties of the depository), a *depository* should take reasonable care to ensure that a *scheme* is managed in accordance with COLL 6.2 (Dealing) and COLL 6.3 (Pricing and valuation).
- (2) A *depository* should therefore make a regular assessment of the *authorised fund manager's* box management procedures (including supporting systems) and controls. This should include reviewing the *authorised fund manager's* controls and procedures when the *depository* assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.

3 Recording and reporting of box management errors

- (1) An *authorised fund manager* should record all errors which result in a breach of COLL 6.2.8 R (Controls over the issue and cancellation of units) and as soon as an error is discovered, the *authorised fund manager* should report the fact to the *depository*, together with details of the action taken, or to be taken, to avoid repetition of the error.
- (2) A *depository* should report material box management errors to the *FCA* immediately. Materiality should be determined by taking into account a number of factors including:
 - (a) the implications of the error for the sufficiency of controls put into place by the *authorised fund manager*;
 - (b) the significance of any breakdown in the *authorised fund manager's* management controls or other checking procedures;
 - (c) the significance of any failure of systems or back-up arrangements;
 - (d) the duration of an error; and
 - (e) the level of compensation due to the *scheme*, and an *authorised fund manager's* ability (or otherwise) to meet claims for compensation in full.

- (3) A *depository* should also make a return to the FCA (in the manner prescribed by SUP 16.6.8 R) on a quarterly basis.

Payment for units issued

6.2.13

R

- (1) The *authorised fund manager* must, by the close of business on the fourth *business day* following the *issue* of any *units*, arrange for payment to the *depository* of an *AUT* or *ACS* or the *ICVC* of:
- in the case of a *single-priced authorised fund*, the *price* of the *units* and any payments required under ■ COLL 6.3.8 R (Dilution);
 - in the case of a *dual-priced authorised fund*, the *issue price* of the *units*; or
 - in the case of a *regulated money market fund*, the sum required pursuant to article 33 of the *Money Market Funds Regulation*.
- (2) The *authorised fund manager* must make the payment referred to in (1) in cash or cleared funds unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies.
- (3) Where the *authorised fund manager* has not complied with (1), it must reimburse the *authorised fund* for any lost interest unless the amount involved is not, in the *depository's* opinion, material to the *authorised fund*.

Payment for cancelled units

6.2.14

R

- (1) On cancelling *units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *depository* of the *AUT* or *ACS* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay:
- in the case of a *single-priced authorised fund*, the *price* of the *units* (less any deduction required under ■ COLL 6.3.8 R);
 - in the case of a *dual-priced authorised fund*, the *cancellation price* of the *units*; or
 - in the case of a *regulated money market fund*, the sum required pursuant to article 33 of the *Money Market Funds Regulation*, in accordance with (1A).
- (1A) The *depository* must pay the amount in (1):
- to the *authorised fund manager*;
 - where relevant, to the *unitholder*;
 - for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed* or *contractual scheme deed*; or
 - where the amount relates to an *eligible CIS amount* that is a *dormant asset* arising from the conversion of *units* (see section 9(3)(a) of the Dormant Assets Act 2022), either:
 - to the *authorised fund manager* (for onward payment to a *dormant asset fund operator*); or
 - where relevant, to the *dormant asset fund operator*.

- (2) If the *authorised fund manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in ■ COLL 5 (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.
- (3) If (2) applies, the *authorised fund manager* must take reasonable steps to rectify the currency shortage as quickly as possible.
- (4) This *rule* does not apply where ■ COLL 6.2.15 R is in operation.
- (5) Nothing in this section requires an *ICVC*, a *depository* or an *authorised fund manager* to part with *money* or to transfer *scheme property* for a *cancellation* or *redemption* of *units* where any *money* due on the earlier *issue* or *sale* of those *units* has not been received.

In specie issue and cancellation

6.2.15 **R** The *depository* may take into or pay out of *scheme property* assets other than cash as payment for the *issue* or *cancellation* of *units* but only if:

- (1) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of *unitholders*; and
- (2) the *instrument constituting the fund* so provides.

Sale and redemption

6.2.16 **R** (1) In accordance with ■ COLL 4.2.5R (17) (Table: contents of the prospectus), the *authorised fund manager* must describe the arrangements for the *sale* and *redemption* of *units* in the *prospectus*.

- (2) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* in the *authorised fund*, in accordance with the conditions in the *instrument constituting the fund* and the *prospectus* unless:
 - (a) it has reasonable grounds to refuse such *sale*; or
 - (b) the *issue* of *units* is prevented under ■ COLL 6.2.18 R (Limited issue).
- (3) Subject to ■ COLL 6.2.19 R (Limited redemption) and ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must, at all times during the *dealing day*, on request of any qualifying *unitholder*, effect the *redemption* of *units* in accordance with the conditions in the *instrument constituting the fund* and the *prospectus* unless it has reasonable grounds to refuse such *redemption*.
- (4) On agreeing to a *redemption* of *units* in (3), the *authorised fund manager* must pay the *unitholder* the appropriate proceeds of *redemption* within the period specified in (5) unless the *authorised fund manager* has reasonable grounds for withholding all or any part of the proceeds.

- (5) Except where (5A) applies the period in (4) expires at the close of business on the fourth *business day* following the later of:
 - (a) the *valuation point* at which the *price* for the *redemption* was determined; or
 - (b) the time when the *authorised fund manager* has all the duly executed instruments and authorisations to effect (or enable the *authorised fund manager* to effect) the transfer of title to the *units*.
- (5A) Where a *non-UCITS retail scheme* operating as a *FAIF* operates *limited redemption arrangements*, the period in (4) expires no later than the expiry of a period of 185 *days* from the date of receipt and acceptance of the instruction to *redeem*.
- (6) Except where (7) applies, and subject to ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of *dealing in units* if later.
- (7) Where the *authorised fund* operates *limited redemption arrangements*, the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the expiry of a period of 185 *days* from the date of the receipt and acceptance of the instruction to *sell* or *redeem*.
- (8) [deleted]
- (9) [deleted]
- (10) Paragraphs (4), (5) and ■ COLL 6.3.5AR (2) (Sale and redemption prices for single-priced authorised funds) do not apply where the *authorised fund manager* of an *AUT* or *ICVC* is buying *units* as *principal* on an investment exchange (for an *AUT* in accordance with a power in the *trust deed*) and settlement will be made in accordance with the rules of that exchange.
- (11) Paragraph (4) does not apply where ■ COLL 6.2.17AR (Transfers under the Dormant Assets Act 2022) applies.

Sale and redemption: guidance

6.2.17

G

- (1) The *prospectus* of an *authorised fund* may allow the *authorised fund manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem units* at that *valuation point*. In order to protect *customers'* interests, the cut-off point should be no earlier than the close of business on the *business day* before the *valuation point* it relates to. If there is more than one *valuation point* in a *day* the cut-off should not be before any previous *valuation point*.
- (2) Where the *authorised fund* operates *limited redemption arrangements*, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying

investments provided the 185 day limit in ■ COLL 6.2.16 R (7) (Sale and redemption) is complied with.

- (3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to *sell* or *redeem* to the *authorised fund manager* but not to differentiate between *unitholders* or potential *unitholders*.
- (4) [deleted]

Transfers under the Dormant Assets Act 2022

6.2.17A

R

- (1) This *rule* applies where the *authorised fund manager* or the *depository* of an *authorised fund* transfers to a *dormant asset fund operator* a *dormant asset* that is:
 - (a) an amount owing by virtue of the conversion of one or more *units* into a right to payment (see section 9(3)(a) of the Dormant Assets Act 2022); or
 - (b) *eligible redemption proceeds*.
- (2) Before a transfer in (1) can be effected, the *authorised fund manager* must:
 - (a) take reasonable steps to reunite the relevant *eligible CIS amounts* to be transferred with their owners (see section 23 of the Dormant Assets Act 2022); and
 - (b) be satisfied that the *eligible CIS amount* is a *dormant asset*.
- (3) Upon effecting a transfer in (1), the *authorised fund manager* (or, where relevant, the *depository*) must ensure that such records as are specified in ■ COLL 6.6.6R(6) (Maintenance of records) are retained.

Conversion of units into a right to payment under the Dormant Assets Act 2022

6.2.17B

R

- (1) This *rule* applies where the *authorised fund manager* or the *depository* converts one or more *units* into a right to payment for transfer to a *dormant asset fund operator* in accordance with ■ COLL 6.2.17AR and sections 8 to 10 of the Dormant Assets Act 2022
- (2) On conversion of *units* into a right to payment the *authorised fund manager* or the *depository* must:
 - (a) effect a *redemption of units*; and
 - (b) transfer the *eligible CIS amount* to a *dormant asset fund operator*.

6.2.17C

G

- (1) Section 10 of the Dormant Assets Act 2022 specifies when an *eligible CIS amount* is *dormant* and may be transferred to a *dormant asset fund operator* in accordance with the applicable provisions of the dormant assets scheme established by that Act.

- (2) An *eligible CIS amount* that is a *dormant asset* should be transferred to a *dormant asset fund operator* only as provided for in the *instrument constituting the fund* and the *prospectus*.
- (3) When taking reasonable steps to reunite owners with their *eligible CIS amounts* under ■ COLL 6.2.17AR(2)(a), the *authorised fund manager* should comply with any arrangements it has entered into with the *dormant asset fund operator* (see section 23 of the Dormant Assets Act 2021) and have regard to industry standards of good practice.

Limited issue

6.2.18

R

- (1) If an *authorised fund* limits the *issue* of any *class of unit*, the *prospectus* of an *authorised fund* must provide for the circumstances and conditions when *units* will be issued.
- (2) Where (1) applies, the *authorised fund manager* may not provide for the further *issue* of *units* unless, at the time of the *issue*, it is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *scheme's* investment objective or materially prejudicing existing *unitholders*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for the *issue* of *units* provided there is no prejudice to the interests of any *unitholder*.

Limited redemption

6.2.19

R

- (1) The *instrument constituting the fund* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF*, or that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.
- (2) Where (1) applies, the *scheme* must provide for *sales* and *redemptions* at least once in every six *months*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for *sales* and *redemptions* of *units* provided there is no prejudice to the interests of any *unitholder*.
- (4) The *scheme* may provide for *sales* of *units* of any *class* to be executed at a greater frequency than *redemptions* of *units* of the same *class*.

Limited redemption: guidance

6.2.20

G

The conditions for *limited redemption arrangements* in ■ COLL 6.2.19 R should be considered, for *AUTs* and *ACs* as well as for *ICVCs*, in conjunction with PERG 9 (Meaning of an open-ended investment company) and PERG 9.8 (The investment condition: the 'expectation test' (section 236(3)(a) of the Act)).

Deferred redemption

6.2.21

R

- (1) Subject to (1A), (3), and (4), the *instrument constituting the fund* and the *prospectus* of an *authorised fund* which has at least one *valuation point* on each *business day* may permit deferral of *redemptions* at a

valuation point to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.

- (1A) Subject to (3) the *instrument constituting the fund* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF* may permit deferral of *redemptions* at a *valuation point* to a following *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.
- (2) Any deferral of *redemptions* under (1) or (1A) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:
 - (a) the consistent treatment of all *unitholders* who have sought to *redeem units* at any *valuation point* at which *redemptions* are deferred; and
 - (b) that all *deals* relating to an earlier *valuation point* are completed before those relating to a later *valuation point* are considered.
- (3) Any deferral under (1A) is subject to the limitations on payments to *unitholders* in ■ COLL 6.2.16 R (5A).
- (4) Any deferral under (1) in relation to an *authorised fund* that is a *regulated money market fund* must be consistent with the *Money Market Funds Regulation*, where relevant.

Deferred redemption: guidance

6.2.22

G

- (1) In times of high levels of *redemption*, deferred *redemption* will enable the *authorised fund manager* to protect the interests of continuing *unitholders* by allowing it to match the sale of *scheme property* to the level of *redemptions*. This should reduce the impact of *dilution* on the *scheme*.
- (2) Article 34 of the *Money Market Funds Regulation* provides for deferred *redemption* in relation to certain kinds of *regulated money market funds* in particular circumstances.

Property Authorised Investment Funds

6.2.23

R

- (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").
- (1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:
 - (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
 - (b) in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.

6.2.24

G

Reasonable steps to monitor the maximum allowable include:

- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
 - (a) notify the *body corporate* of that event;
 - (b) not pay any income distribution to the *body corporate*; and
 - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.
 - (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.
- (1) regularly reviewing the *register*; and
 - (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.



6.3 Valuation and pricing

Application

6.3.1

R

- (1) Subject to (3) and (4), this section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.
- (2) [deleted]
- (3) The following *rules and guidance* do not apply to an *authorised fund manager*, a *depository*, an *ICVC*, or any other *director* of an *ICVC* where the *authorised fund* is a *regulated money market fund*:
 - (a) ■ COLL 6.3.3R;
 - (b) ■ COLL 6.3.3DR;
 - (c) ■ COLL 6.3.4R(1) and (3) to (6D);
 - (d) ■ COLL 6.3.5R; and
 - (e) ■ COLL 6.3.5AR to ■ COLL 6.3.5CG.
- (4) Where an *authorised fund* is a *regulated money market fund*, ■ COLL 6.3.6G applies to the *authorised fund manager* and *depository* of that *authorised fund* to the extent it is consistent with the requirements of the *Money Market Funds Regulation*.

Purpose

6.3.2

G

- (1) In accordance with *Principle 6*, this section is intended to ensure that the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* is responsible for valuing the *scheme property* of the *authorised fund* it manages and for calculating the *price of units* in the *authorised fund*. This section protects *clients* by:
 - (a) setting out *rules and guidance* to ensure the *prices of units* in both a *single-priced authorised fund* and a *dual-priced authorised fund* are calculated fairly and regularly;
 - (b) allowing the *authorised fund manager* to mitigate the effects of any *dilution* (reduction) in the value of the *scheme property* caused by buying and selling underlying investments as a result of the *issue or cancellation* of *units*; and
 - (c) [deleted]
 - (d) ensuring that *prices* are made public in an appropriate manner.

- (3) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*. Consequently different methods of *pricing units* may be applied by an *authorised fund manager* to different *sub-funds* of an *umbrella*.
- (4) The *authorised fund manager* must follow the same method of *pricing* for each *class of units* in an *authorised fund*, or in a *sub-fund* of an *umbrella*.
- (5) A *full-scope UK AIFM* that is the *authorised fund manager* of a *non-UCITS retail scheme* should comply with the requirements of:
 - (a) ■ FUND 3.9 (Valuation); and
 - (b) this chapter.

Valuation

6.3.3

R

- (1) To determine the *price of units* the *authorised fund manager* must carry out a fair and accurate valuation of all the *scheme property* in accordance with the *instrument constituting the fund* and the *prospectus*.
- (2) For a *dual-priced authorised fund*, each valuation of the *scheme property* must consist of two parts, carried out on an *issue* basis and a *cancellation* basis respectively.

Accounting procedures

6.3.3A

R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure the employment of the accounting policies and procedures referred to in ■ SYSC 4.1.9 R (Accounting policies), so as to ensure the protection of *unitholders*.
- (2) Accounting for the *scheme* shall be carried out in such a way that all assets and liabilities of the *scheme* can be directly identified at all times.
- (3) If the *scheme* is an *umbrella*, separate accounts must be maintained for each *sub-fund*.

[Note: article 8(1) of the *UCITS implementing Directive*]

6.3.3B

R

An *authorised fund manager* of a *UCITS scheme* must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the *United Kingdom*, so as to ensure that the calculation of the net asset value of each *scheme* it manages is accurately effected, on the basis of the accounting, and that subscription and *redemption* orders can be properly executed at that net asset value.

[Note: article 8(2) of the *UCITS implementing Directive*]

6.3.3C

G

- (1) The accounting policies and procedures referred to in ■ COLL 6.3.3B R should enable the *authorised fund manager* of a *UCITS scheme* to

value the *scheme property* accurately at each *valuation point* and to calculate *dealing prices* by reference to that valuation.

- (2) Where different share or *unit classes* exist, it should be possible to extract from the accounting records the net asset value of each different *class*.

[Note: recital (9) of the *UCITS implementing Directive*]

6.3.3D **R** An *authorised fund manager* of a *UCITS scheme* must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each *scheme* it manages.

[Note: article 8(3) of the *UCITS implementing Directive*]

Valuation of an immovable

6.3.3E **R** An *authorised fund manager* may only agree a fair and reasonable price for an immovable to reflect a rapid sale if the *prospectus* states that it may do so, in accordance with ■ COLL 4.2.5R(3)(pa)(ii).

Valuation points

- 6.3.4 **R**
 - (1) An *authorised fund* must not have fewer than two regular *valuation points* in any *month* and if there are only two *valuation points* in any *month*, the regular *valuation points* must be at least two weeks apart.
 - (2) The *prospectus* of a *scheme* must contain information about its regular *valuation points* for the purposes of *dealing in units* in accordance with ■ COLL 4.2.5R (16) (Table: contents of the prospectus).
 - (3) Where a *scheme* operates *limited redemption arrangements*, (1) does not apply and the *valuation points* must be stated in the *prospectus* but must not be set more than six *months* apart.
 - (4) Where a *scheme* operates *limited redemption arrangements*, it must be valued and *prices* published in the manner set out in ■ COLL 6.3.11 R (Publication of prices) at least once in every *month*.
 - (5) In (4), a *valuation point* for the purpose of publishing *prices* only, does not make it a *valuation point* for the purpose of (2) unless it is disclosed as such in the *prospectus*.
 - (6) *Higher volatility funds* must have at least one *valuation point* every *business day* except where the *scheme* is a *non-UCITS retail scheme* operating as a *FAIF*.
 - (6A) *Qualifying money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost basis.
 - (6B) [deleted]
 - (6C) [deleted]

(6D) [deleted]

(7) No *valuation points* are required during the period of any *initial offer*.

(8) The *authorised fund manager* may determine to have an additional *valuation point* for an *authorised fund*, in which case it must inform the *depository*.

Price of a unit

6.3.5

R

(1) An *authorised fund manager* must ensure that the *price* of a *unit* of any *class* is calculated:

- (a) by reference to the net value of the *scheme property*; and
- (b) in accordance with the provisions of both the *instrument constituting the fund* and the *prospectus*.

(2) Any *unit price* calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.

(3) For each *class of units* in a *single-priced authorised fund*, a single *price* must be calculated at which *units* are to be *issued* and *cancelled*.

Sale and redemption prices for single-priced authorised funds

6.3.5A

R

The *authorised fund manager* of a *single-priced authorised fund* must not:

(1) *sell a unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any payment made under ■ COLL 6.3.8 R; or

(2) *redeem a unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deduction under ■ COLL 6.3.8 R.

Sale and redemption price parameters for dual-priced authorised funds

6.3.5B

R

(1) The *authorised fund manager* of a *dual-priced authorised fund* must not:

- (a) *sell a unit* for more than the maximum *sale price* of a *unit* of the relevant *class* at the relevant *valuation point*; or
- (b) *redeem a unit* for less than the *cancellation price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted.

(2) The maximum *sale price* of *units* under (1)(a) is the total of:

- (a) the *issue price*; and
- (b) the current *preliminary charge*.

(3) The *sale price* of *units* under (1)(a) must not be less than the relevant *redemption price* under (1)(b).

- (4) The *redemption price* under (1)(b) must not exceed the relevant *issue price* of the relevant *units*.
- (5) Subject to ■ COLL 6.7.9 R (Charges for the exchange of units in an umbrella), in the case of an *umbrella*:
 - (a) the maximum *price* at which *units* in one *sub-fund* that is a *dual-priced authorised fund* may be acquired in exchange for *units* in another *sub-fund* must not exceed the relevant maximum *sale price* (less any *preliminary charge*) of the new *units*; and
 - (b) the minimum *price* at which the old *units* in a *sub-fund* that is a *dual-priced authorised fund* may be taken in exchange must not be less than the equivalent *cancellation price*.

6.3.5C

G

The *prospectus* may make provision for *large deals* to be carried out at a higher *sale price* or a lower *redemption price* than those published, provided they do not exceed the relevant maximum and minimum parameters.

6

Profits from dealing as principal

6.3.5D

R

- (1) Where an *authorised fund manager (AFM)*:
 - (a) accepts instructions to *sell* and *redeem units as principal*; and
 - (b) is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,

subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was *sold* (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.
- (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3) below, when dealing as *principal* in relation to:
 - (a) a *unit issued* at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager as principal*; and
 - (b) a *unit redeemed* and *cancelled* at that *valuation point*.
- (3) The amount of the loss referred to in (2) is:
 - (a) for *units issued* in accordance with (2)(a), the difference between the *issue price* of a *unit* and the *sale price* of that *unit*, less any *preliminary charge*;
 - (b) for *units cancelled* in accordance with (2)(b), the difference between the *cancellation price* of a *unit* and the *redemption price* of that *unit*, before any *redemption charge* is applied.
- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent *valuation point*.

6.3.5E

G

(5) This rule applies to the *redemption* and *sale of units* of different *classes* at the same *valuation point*, if those *classes* are treated as one for the purpose of ■ COLL 6.2.6AR.

(1) The *authorised fund manager* may commit its own capital to hold *units* for the purpose of *dealing as principal* and may seek to profit from gains in the value of the *units* it holds, when it *issues* or *redeems units* at one *valuation point* then *sells* or *cancels* them at a later *valuation point*. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the *units* fall in value, or from the ability to match simultaneous *sales* and *redemptions* at different *prices* at no risk to its own capital.

(2) The *AFM* may allocate any amount arising under ■ COLL 6.3.5DR(1) in the interests of investors by paying it into *scheme property* for the benefit of all *unitholders*. Alternatively, the *AFM* may redistribute it individually among the transacting investors.

(3) Where the *AFM* intends to allocate a payment to *scheme property*, it should determine if the amount (when added to any other amounts of the same kind relating to that *class of units*) would, if taken into account in the *scheme's* valuation, affect the accuracy of the *unit prices* to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the *scheme* until the payment is transferred. Such payments into *scheme property* should be made regularly and no less frequently than payments for the *AFM's* management charge are transferred out of *scheme property*.

(4) The calculation to be performed under ■ COLL 6.3.5DR should be carried out in relation to each *valuation point* of the *scheme* on a timely basis. Where it is not practical to do this before *unit prices* are calculated and published, the *AFM* should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to *scheme property*.

Valuation and pricing guidance

6.3.6

G

Table: This table belongs to ■ COLL 6.3.2 G (2) (a) and ■ COLL 6.3.3 R (Valuation).

Valuation and pricing

1 The valuation of scheme property

(1) Where possible, *investments* should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.

(2) For some or all of the *investments* comprising the *scheme property*, different prices may be quoted according to whether they are being bought (*offer prices*) or sold (*bid prices*). The valuation of a *single-priced authorised fund* should reflect the mid-market value of such *investments*. In the case of a *dual-priced authorised fund*, the *issue* basis of the valuation will be carried out by reference to the *offer prices* of *investments* and the *cancellation* basis by reference to the *bid prices* of those same *investments*. The *prospectus* should explain how *investments* will be valued for

which a single *price* is quoted for both buying and selling.

(2A) Schemes investing in approved money-market instruments should value such instruments on an amortised cost basis on condition that:

- (a) the approved money-market instrument has a residual maturity of less than three months and has no specific sensitivity to market parameters, including credit risk; or
- (b) the scheme is a qualifying money market fund.

[Note: CESR's UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive]

(2B) [deleted]

(3) Any part of the *scheme property* of an authorised fund that is not an *investment* should be valued at a fair value, but for immovables this is subject to COLL 5.6.20 R (3) (f) (Standing independent valuer and valuation).

(4) For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the *investment* or other part of the *scheme property* should, in the case of a *single-priced authorised fund*, be excluded from the value of an *investment* or other part of the *scheme property*. In the case of a *dual-priced authorised fund*, any such payments should be added to the *issue* basis of the valuation, or subtracted from the *cancellation* basis of the valuation, as appropriate. Alternatively, the *prospectus* of a *dual-priced authorised fund* may prescribe any other method of calculating *unit prices* that ensures an equivalent treatment of the effect of these payments.

(5) Where the *authorised fund manager* has reasonable grounds to believe that:

- (a) no reliable price exists for a *security* at a *valuation point*; or
- (b) the most recent price available does not reflect the *authorised fund manager's* best estimate of the value of a *security* at the *valuation point*

it should value an *investment* at a price which, in its opinion, reflects a fair and reasonable price for that *investment* (the fair value price);

(6) The circumstances which may give rise to a fair value price being used include:

- (a) no recent trade in the *security* concerned; or
- (b) the occurrence of a significant event since the most recent closure of the market where the price of the *security* is taken.

In (b), a significant event is one that means the most recent price of a *security* or a basket of *securities* is materially different to the price that it is reasonably believed would exist at the *valuation point* had the relevant market been open.

(7) In determining whether to use such a fair value price, the *authorised fund manager* should include in his consideration:

- (a) the type of *authorised fund* concerned;
- (b) the *securities* involved;

(c) the basis and reliability of the alternative price used; and
 (d) the *authorised fund manager's* policy on the valuation of *scheme property* as disclosed in the *prospectus*.

(7A) Where the *authorised fund manager*, the *depository* or the *standing independent valuer* have reasonable grounds to believe that the most recent valuation of an immovable does not reflect the current value of that immovable, then, unless COLL 6.3.6G(1)(7B) applies, the *authorised fund manager* should consult and agree with the *standing independent valuer* a fair and reasonable value for the immovable.

(7B) Where the *authorised fund manager* decides that an immovable must be sold quickly to meet *redemption* requests as they fall due, it should consult and agree with the *standing independent valuer* a fair and reasonable price for the immovable to reflect a rapid sale, to extent that the *prospectus* states that it may do so.

(8) The *authorised fund manager* should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.

(9) Where a *unit price* is determined using properly applied fair value prices in accordance with policies in (8), subsequent information that indicates the *price* should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

2 The pricing controls of the authorised fund manager

(1) An *authorised fund manager* needs to be able to demonstrate that it has effective controls over its calculations of *unit prices*.

(2) The controls referred to in (1) should ensure that:

- (a) asset prices are accurate and up to date;
- (b) investment transactions are accurately and promptly reflected in valuations;
- (c) the components of the valuation (including stock, cash, and *units in issue*), are regularly reconciled to their source or prime records and any reconciling items resolved promptly and debtors reviewed for recoverability;
- (d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
- (e) compliance with the investment and borrowing powers is regularly reviewed;
- (f) dividends are accounted for as soon as *securities* are quoted ex-dividend (unless it is prudent to account for them on receipt);
- (g) fixed interest dividends, interest and expenses are accrued at each *valuation point*;
- (h) tax positions are regularly reviewed and adjusted, if necessary;
- (i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated;
- (j) the fund manager regularly reviews the portfolio valuation for accuracy; and

(k) the valuation of *OTC derivatives* is accurate and up to date and in compliance with the methods agreed with the *depository*.

- (3) In exercising its pricing controls, the *authorised fund manager* may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the *authorised fund* or the materiality of any effect on the *price*.
- (4) Evidence of the exercise of the pricing controls should be retained.
- (5) Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in an *authorised fund manager's* favour, will make demonstrating effective controls more difficult.
- (6) Where the *pricing* function is delegated to a third party, COLL 6.6.15 R (1) (Committees and delegation) will apply.

3 The depository's review of the authorised fund manager's systems and controls

- (1) This section provides details of the types of checks a *depository* should carry out to be satisfied that the *authorised fund manager* adopts systems and controls which are appropriate to ensure that *prices* of *units* are calculated in accordance with this section and to ensure that the likelihood of incorrect *prices* will be minimised. These checks also apply where an *authorised fund manager* has delegated all or some of its *pricing* functions to one or more third parties.
- (2) A *depository* should thoroughly review an *authorised fund manager's* systems and controls to confirm that they are satisfactory. The *depository's* review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.
- (3) A review should be performed when the *depository* is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.
- (4) A review should be carried out more frequently where a *depository* knows or suspects that an *authorised fund manager's* systems and controls are weak or are otherwise unsatisfactory.
- (5) Additionally, a *depository* should from time to time review other aspects of the valuation of the *scheme property* of each *authorised fund* for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, *units* in issue, *securities* prices (and in particular the prices of *OTC derivatives*, unapproved *securities* and the basis for the valuation of unquoted *securities*) and any other relevant matters, for example an accumulation factor or a currency conversion factor.
- (6) A *depository* should ensure that any issues, which are identified in any such review, are properly followed up and resolved.

4 The recording and reporting of instances of incorrect pricing

- (1) An *authorised fund manager* should record each instance where the *price* of a *unit* is incorrect as soon as the error is discovered, and report the fact to the *depository* together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.
- (2) In accordance with COLL 6.6.11 G (Duty to inform the FCA), the *depository* should report any breach of the rules in COLL 6.3 immediately to the FCA. However, notification should relate to instances which the *depository* considers material only.
- (3) A *depository* should also report to the FCA immediately any instance of incorrect *pricing* where the error is 0.5% or more of the *price* of a *unit*, where a *depository* believes that reimbursement or payment is inappropriate and should not be paid by an *authorised fund manager*.
- (4) In accordance with SUP 16.6.8 R, a *depository* should also make a return to the FCA on a quarterly basis which summarises the number of instances of incorrect *pricing* during a particular period.

5 The rectification of pricing breaches

- (1) COLL 6.6.3R(3)(c) (Functions of the authorised fund manager) places a duty on the *authorised fund manager* to take action to reimburse affected *unitholders*, former *unitholders*, and the *scheme* itself, for instances of incorrect *pricing*, except if it appears to the *depository* that the breach is of minimal significance.
- (2) A *depository* may consider that the instance of incorrect *pricing* is of minimal significance if:
 - (a) the *authorised fund manager* and *depository* meet the standards of control set out in Section 2 and Section 3 of this Table; and
 - (b) the error in *pricing* of a *unit* is less than 0.5% of the correct *price*.
- (3) In determining (2), if the instance of incorrect *pricing* is due to one or more factors or exists over a period of time, each *price* should be considered separately.
- (4) If a *depository* deems it appropriate, it may, in spite of the circumstances outlined in (2), require a payment from the *authorised fund manager* or from the *authorised fund* to the *unitholders*, former *unitholders*, the *authorised fund* or the *authorised fund manager* (where appropriate).
- (5) The *depository* should satisfy itself that any payments required following an instance of incorrect *pricing* are accurately and promptly calculated and paid.
- (6) If a *depository* considers that reimbursement or payment is inappropriate, it should report the matter to the FCA, together with its recommendation and justification. The *depository* should take into account the need to avoid prejudice to the rights of *unitholders*, or the rights of *unitholders* in a *class* of *units*.
- (7) It may not be practicable, or in some cases legally permissible, for the *authorised fund manager* to obtain reimbursement from *unitholders*, where the *unitholders* have benefited from the incorrect *price*.

(8) In all cases where reimbursement or payment is required, amounts due to be reimbursed to *unitholders* for individual sums which are reasonably considered by the *authorised fund manager* and *depository* to be immaterial, need not normally be paid.

6.3.7 **R** [deleted]

Dilution

6.3.8 **R** (1) Subject to (1A), when arranging to *sell*, redeem, *issue* or cancel *units*, or when *units* are *issued* or cancelled under ■ COLL 6.2.7 R (1) (Issues and cancellations through an authorised fund manager), an *authorised fund manager* is permitted to:

- (a) require the payment of a *dilution levy*; or
- (b) make a *dilution adjustment*; or
- (c) neither require a *dilution levy* nor make a *dilution adjustment*;

in accordance with its statements in the *prospectus* required by ■ COLL 4.2.5R (18) (Table: contents of the prospectus).

(1A) When arranging to *sell*, redeem, *issue* or cancel *units*, or when *units* are *issued* or cancelled under ■ COLL 6.2.7R(1) (Issues and cancellations through an authorised fund manager), an *authorised fund manager* of a *regulated money market fund* may only require payment of a *dilution levy* or make a *dilution adjustment* to the extent it is permissible under the *Money Market Funds Regulation*.

(2) An *authorised fund manager* operating either a *dilution levy* or a *dilution adjustment*, must operate that measure in a fair manner to reduce *dilution* and solely for that purpose.

(3) A *dilution levy* becomes due at the same time as payment or transfer of property becomes due for the *issue*, *sale*, *redemption* or *cancellation* and any such payment in respect of a *dilution levy* must be paid to the *depository* to become part of *scheme property* as soon as practicable after receipt.

(4) A *dilution adjustment* may be made as part of the calculation of the unit price for the purpose of reducing *dilution* in the *scheme* or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the *issue* or *cancellation* of *units*.

(5) Where the *authorised fund manager* decides to make or not to make a *dilution adjustment*, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an *affected person*.

(6) As soon as practicable after a *valuation point*, the *authorised fund manager* must provide the *depository* with the amount or rate of any *dilution adjustment* made to the *price* or any *dilution levy* applied.

Forward pricing

6.3.9 **R** (1) Subject to (7), for the *sale* and *redemption* of *units*, all *deals* must be at a *forward price*.

- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) *Deals for the sale and redemption of units in a regulated money market fund need not be at a forward price where the circumstances in article 34(2) of the Money Market Funds Regulation apply.*

6.3.10 **G** [deleted]

Publication of prices

6.3.11 **R** Where the *authorised fund manager* is prepared to *deal* in *units*, or is willing to *issue* or *cancel units*, under ■ COLL 6.2.7, it must make the *dealing prices* public in an appropriate manner.

Manner of price publication

- 6.3.12 **G**
- (1) In determining the appropriate manner of making *prices* public, the *authorised fund manager* should ensure that:
 - (a) a *unitholder* or potential *unitholder* can obtain the *prices* at a reasonable cost;
 - (b) *prices* are available at reasonable times;
 - (c) publication is consistent with the manner and frequency at which the *units* are *dealt* in;
 - (d) the manner of publication is disclosed in the *prospectus*; and
 - (e) *prices* are published in a consistent manner.
 - (2) Examples of what might be deemed appropriate include:
 - (a) publication in a national newspaper;
 - (b) supply through an advertised local rate or freephone telephone number;
 - (c) publication on the internet;
 - (d) inclusion in a database of *prices* which is publicly available; or
 - (e) communication to all existing *unitholders*.
 - (3) The *authorised fund manager* should make previous *prices* available to any *unitholder* or potential *unitholder*.

Maintaining the value of a qualifying money market fund

6.3.13 **R** The *authorised fund manager* of a *qualifying money market fund* valuing *scheme* property on an amortised cost basis must:

- (1) carry out a valuation of the *scheme property* on a mark to market basis at least once every week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and
- (2) ensure that the value of the *scheme property* when valued on a mark to market basis does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.

6.3.14

G

The *authorised fund manager* should advise the *depository* when the mark to market value of a *qualifying money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *qualifying money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.

6.4 Title and registers

Application

- 6.4.1 **R**
- (1) This section applies to an *authorised fund manager* and a *depository* of an *AUT* or *ACS*.
 - (2) ■ COLL 6.4.9 (Plan registers) also applies to the *ACD*, any other *director* and the *depository* of an *ICVC*.

Purpose

- 6.4.2 **G**
- The aim of this section is to protect *consumers*, by setting out the requirements for a *register of unitholders* for an *AUT* or *ACS* and for a *plan register* for an *authorised fund*, so a proper record of ownership of *units* is maintained, whether held directly or indirectly through a *group plan*.

Explanation of this section

- 6.4.3 **G**
- (1) (a) This section deals with matters relating to the *register of unitholders of units* in an *AUT* or *ACS* including its establishment and contents.
 - (b) The *authorised fund manager* or *depository* may be responsible for the *register*.
 - (c) In any event, the *person* responsible for the *register* must be stated in the *trust deed* or *contractual scheme deed* and this section details what his duties are.
 - (d) The provisions relating to *documents evidencing title* to *units* are dependent on the provisions in the *trust deed* or *contractual scheme deed* and their operation should be set out in the *prospectus*.
 - (2) For an *ICVC*, requirements as to the *register* of holders and transfer of *units* are contained in Schedule 3 of the *OEIC Regulations* (Register of shareholders).
 - (3) ■ COLL 6.4.9 makes provision to ensure that if the cost of the *plan register* is borne by the *scheme*, *plan investors* have the same rights in respect of notice and disclosure as *unitholders* on the main *register*.

Register: general requirements and contents

6.4.4

R

- (1) Either:
 - (a) the *manager* or the *trustee* (as nominated in the *trust deed*); or
 - (b) the *authorised contractual scheme manager* or the *depository* of the *ACS* (as nominated in the *contractual scheme deed*);must establish and maintain a *register of unitholders* as a *document* in accordance with this section.
- (2) The *manager* or *trustee* or the *authorised fund manager* or *depository* in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (3) The *register* must contain:
 - (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered);
 - (b) the number of *units* of each *class* held by each *unitholder*;
 - (c) the date on which the *unitholder* was registered for *units* standing in his name; and
 - (d) the number of *units* of each *class* currently in *issue*.
- (4) No notice of any trust, express, implied or constructive which may be entered in the *register* is binding on the *manager* or *trustee* or the *authorised fund manager* or *depository*, but this does not affect their obligations under ■ COLL 6.4.9 R (1) (Plan registers).
- (5) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
- (6) The *person* responsible for the *register* in (1) must:
 - (a) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
 - (b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;
 - (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or *authorised fund manager*), during office hours;
 - (d) supply free of charge to any *unitholder* or his authorised representative a copy of the entries on the *register* relating to that *unitholder* on request;
 - (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or *authorised fund manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
 - (f) carry out any conversion of *units* allowed for by ■ COLL 6.4.8 R (Conversion of units) after consultation with the *manager* or *trustee* or the *authorised fund manager* or *depository*, as appropriate.

The authorised fund manager as unitholder

6.4.5

R

- (1) Subject to (3), if no *person* is entered in the *register* as the *unitholder* of a *unit*, the *authorised fund manager* must be treated as the *unitholder* of each such *unit* which is in *issue*.
- (2) Where *units* are transferred to the *authorised fund manager*, they need not be cancelled and the *authorised fund manager* need not be entered on the *register* as the new *unitholder*.
- (3) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

Transfer of units by act of parties: AUTs and ACSs

6.4.6

R

- (1) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *trust deed* or *prospectus*.
 - (1A) Provided:
 - (a) the requirements in ■ COLL 6.4.6A R (Transfer of units in an ACS) are satisfied; and
 - (b) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by FCA rules;

every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (2) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (3) In the case of an *AUT* or *ACS*, every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
 - (a) any necessary documents that may be required by legislation; and
 - (b) any other evidence reasonably required by the *person* responsible for the *register*.
- (4) In the case of an *AUT* or *ACS*, the details of instruments of transfer must be kept for a period of six years from the date of its registration.

- (5) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

Transfer of units in an ACS

6.4.6A

R

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 3.2.6 R(27G) (*ACS*s: *UCITS* and *NURS* transfer of units) and ■ COLL 4.2.5 R(5B) (*ACS*s: *UCITS* and *NURS* transfer of units), *units* in an *ACS* may only be transferred to a *person* that is a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or
 - (c) *person* who already holds *units* in the *scheme*.

6.4.6B

G

The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 6.6.3B R (Redemption of *ACS* units by an authorised contractual scheme manager) in such cases by redeeming such *units*.

Certificates

6.4.7

R

- (1) Following the *sale* of *units* or as a result of ■ COLL 6.4.6 R (Transfer of units by act of parties: *AUT*s and *ACS*s) a document recording title to those *units* may be issued in such a form as the *trust deed* or *contractual scheme deed* permits.
- (2) The person responsible for the *register* must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming *units* require the *unitholder* to surrender that document.
- (3) [deleted]
- (4) *Bearer certificates* may not be issued for *AUT*s or *ACS*s.

Conversion of units

6.4.8

R

Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

Plan registers

6.4.9

R

- (1) The *ACD* and any other *directors* of an *ICVC* or the *person* responsible for the *register* of an *AUT* or an *ACS* may arrange for a *plan register* to be established and maintained.
- (2) Where payments are made out of *scheme property* to establish and maintain a *plan register*, *plan investors* must be treated as *unitholders* for the purposes of ■ COLL 4.3 to ■ COLL 4.5 and ■ COLL 6.4.4 R (Register: general requirements and contents).



6.5 Appointment and replacement of the authorised fund manager and the depositary

Application

6.5.1 **R** This section applies in accordance with **COLL 6.5.2 R** (Table of application).

6.5.2 **R** Table of application
This table belongs to **COLL 6.5.1 R**.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other director of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
6.5.1R	x	x	x	x	x	x
6.5.3R	x	x	x	x		
6.5.4R		x	x	x		
6.5.5R		x	x			
6.5.6R	x			x		
6.5.7R					x	x
6.5.8R					x	x
6.5.9R					x	x
6.5.10R		x		x	x	x

Note: "x" means "applies", but not every paragraph in every *rule* will necessarily apply.

6.5.2A **G** **COLL 6.6A** and **COLL 6.6B** set out additional *FCA rules* and *guidance* applicable to the *authorised fund manager* and *depositary* of a *UCITS scheme* in relation to the appointment and duties of the *depositary*.

Appointment of an ACD

6.5.3 **R** (1) The *directors* (or *director*) of an *ICVC* must take all practicable steps to ensure the *ICVC* has at all times as its *ACD* a *person* who is qualified to act as *ACD*.

- (2) If the *ICVC* ceases to have any *director*, the *depository* must exercise its powers, under the *OEIC Regulations*, to appoint a *person* to be an *ACD* of the *ICVC*.
- (3) For an *ICVC* that holds annual general meetings under the *OEIC Regulations*, the appointment of an *ACD* (other than the first *ACD*), under (1) or (2), must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 *months* from the date the appointment takes effect, unless the appointment has been approved by a resolution of the *unitholders* before the close of that annual general meeting or expiration of that 12 *month* period (as the case may be).
- (4) An *ACD* must not voluntarily terminate its appointment as *ACD* unless the termination is effective at the same time as the commencement of the appointment of a successor *ACD*.
 - (5) (a) In the event of:
 - (i) any *person* becoming or ceasing to be a *director*;
 - (ii) the appointment of an *ACD* being terminated;
 - (iii) a new *ACD* being appointed; or
 - (iv) a corporate *director* (including the *ACD*) becoming aware of any change of its *controller*;
 the *FCA* must immediately be notified in accordance with (b).
 - (b) In the case of:
 - (i) (a)(i), by the *ACD*;
 - (ii) (a)(ii), by the *ACD* whose appointment is being terminated;
 - (iii) (a)(iii), by the new *ACD*; and
 - (iv) (a)(iv), by the corporate *director* concerned.

Termination of appointment of an ACD

6.5.4

R

- (1) The appointment of an *ACD* terminates immediately upon it ceasing to be a *director*.
- (2) The appointment of an *ACD* terminates if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of *directors* of the *ICVC*, is given to the *ACD*.
- (3) If there is no *director* other than the *ACD*, the appointment of the *ACD* terminates if a notice of termination of that appointment is given by the *depository* to the *ACD* and to the *ICVC*, following any of the following events:
 - (a) the calling of a meeting to consider a resolution for winding up the *ACD*;
 - (b) an application being made to dissolve the *ACD* or to strike it off the Register of Companies;
 - (c) the presentation of a petition for the winding up of the *ACD*;
 - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *ACD*'s creditors;

- (e) the appointment of a receiver to the *ACD* (whether an administrative receiver or a receiver appointed over particular property);
 - (f) anything equivalent to (a) to (e) above occurring in respect of the *ACD* in a jurisdiction outside the *United Kingdom*.
- (4) Any termination under (2) or (3) takes effect when the notice is given, or on any subsequent time for its effect stated in the notice, or, if later, the time at which the termination is permitted to take effect under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).
- (5) The *depositary* must (unless the termination takes effect at the same time as the appointment of a successor *ACD*) ensure that the unitholders are informed of the termination of the appointment of an *ACD*.
- (6) The *depositary* is entitled to be reimbursed out of the *scheme property* for its out of pocket expenses in complying with (5).

Other directors

6.5.5

R

- (1) Any *directors* of an *ICVC* other than the *ACD* must exercise reasonable care to ensure that the *ACD* undertakes the responsibilities allocated under ■ **COLL 6.6.3 R (1)** (Functions of the authorised fund manager) in a competent manner and the *ACD* must give those *directors* the information and explanations they consider necessary for this purpose.
- (2) A *director* of an *ICVC* must not appoint an alternate *director*.
- (3) When there is no *person* acting as *ACD*, the *directors* of an *ICVC* have the functions of an *ACD* under ■ **COLL 6.6.3 R (1)**, but this does not affect the powers of the *directors* under ■ **COLL 6.6.15 R** (Committees and delegation).
- (4) When (3) applies, the *directors* must retain the services of one or more *authorised persons* to assist them in performing the functions referred to in ■ **COLL 6.6.3 R (1)** and ■ **COLL 6.6.3 R (2)**.

ICVC without a director

6.5.6

R

If the *ICVC* ceases to have any *directors*, the *depositary* may:

- (1) retain the services of an *authorised person* to carry out the functions referred to in ■ **COLL 6.6.3 R (3)(a)** and (b); or
- (2) manage the *scheme property* itself on behalf of the *ICVC* until a *director* is appointed or the winding up of the *ICVC* is commenced provided it is not prohibited from doing so by any law or *rule*.

Replacement of an authorised fund manager of an AUT or ACS

6.5.7

R

- (1) The *authorised fund manager* of an *AUT* or *ACS* is subject to removal by written notice by the *depositary* upon any of the following events:

- (a) the calling of a meeting to consider a resolution for winding up the *authorised fund manager*;
 - (b) an application being made to dissolve the *authorised fund manager* or to strike it off the Register of Companies;
 - (c) the presentation of a petition for the winding up of the *authorised fund manager*;
 - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *authorised fund manager's* creditors;
 - (e) the appointment of a receiver to the *authorised fund manager* (whether an administrative receiver or a receiver appointed over particular property);
 - (f) anything equivalent to (a) to (e) above occurring in respect of the *authorised fund manager* in a jurisdiction outside the *United Kingdom*;
 - (g) the *depositary* forming the reasonable opinion, and stating in writing, that a change of *authorised fund manager* is desirable in the interest of *unitholders*;
 - (h) a resolution of *unitholders* being passed to remove the *authorised fund manager*; or
 - (i) the *unitholders* of three quarters in value of all of the *units* then in *issue* (excluding *units* held or treated as held by the *authorised fund manager* or by any *associate* of the *authorised fund manager*) making a request in writing to the *depositary* that the *authorised fund manager* should be removed.
- (2) On receipt of a notice by the *depositary* under (1), the *authorised fund manager* of the *AUT* or *ACS* ceases to be the *authorised fund manager*; and the *depositary* must by deed appoint another *person* eligible under the *Act* to be the *authorised fund manager* of the *AUT* or *ACS* upon and subject to that other entering into such deed or deeds as the *depositary* may require.
- (3) If the name of the *AUT* or *ACS* contains a reference to the name of the former *authorised fund manager*, the former *authorised fund manager* is entitled to require the new *authorised fund manager* and the *depositary* immediately on receipt of a notice under (1) to propose a change in the name of the *AUT* or *ACS*.

Retirement of an authorised fund manager of an AUT or ACS

6.5.8

R

- (1) The *authorised fund manager* of an *AUT* or *ACS* has the right to retire in favour of another *person* eligible under the *Act* and approved in writing by the *depositary* upon:
- (a) the retiring *authorised fund manager* appointing that *person* by deed as *authorised fund manager* in its place and assigning to that *person* all its rights and duties as such a *authorised fund manager*; and
 - (b) the new *authorised fund manager* entering into such deeds as the *depositary* reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due

performance of its duties as the *authorised fund manager* of the *AUT* or *ACS*.

- (2) Upon retirement, the retiring *authorised fund manager*:
 - (a) subject to (3), is released from all further obligations under the *rules* in this sourcebook and under the *trust deed* or *contractual scheme deed*; and
 - (b) may retain any consideration paid to it in connection with the change without having to account for it to any *unitholder*.
- (3) Sub-paragraph (2)(a) does not affect the rights of the *depositary* or any other *person* in respect of any act or omission on the part of the retiring *authorised fund manager* before his retirement.

Consequences of removal or retirement of an authorised fund manager of an AUT or ACS

6.5.9

R

- (1) Upon the removal or retirement of the *authorised fund manager*, the removed or retiring *authorised fund manager* of an *AUT* or *ACS*:
 - (a) is entitled to be recorded in the *register* for those *units* continued to be held or treated as held by it as *principal*; and
 - (b) may require the *depositary* to issue to it a certificate for those *units* (if not previously issued).
- (2) Paragraph (1) is subject to any restriction in the *prospectus* relating to the permitted categories of *unitholders*.

Retirement of the depositary

6.5.10

R

- (1) The *depositary* of an *authorised fund* may not retire voluntarily except upon the appointment of a new *depositary*.
- (2) The *depositary* of an *authorised fund* must not retire voluntarily unless, before its retirement, it has ensured that the new *depositary* has been informed of any circumstance of which the retiring *depositary* has informed the *FCA*.
- (3) When the *depositary* of an *authorised fund* wishes to retire or ceases to be an *authorised person*, the *authorised fund manager* may, subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) appoint another *person* eligible to be the *depositary* in its place.

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

Application

6.6.1

R

Subject to (2), this section applies in accordance with ■ COLL 6.6.2 R (Table of application).

Where a *scheme* is a *regulated money market fund*, ■ COLL 6.6.3R and ■ COLL 6.6.14R apply to the *authorised fund manager* and *depositary* of that *scheme* to the extent the provisions are consistent with the requirements of the *Money Market Funds Regulation*.

Table of application

6.6.2

R

This table belongs to ■ COLL 6.6.1 R.

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Authorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
6.6.1R	x	x	x	x	x	x
6.6.3R	x	x		x	x	x
6.6.3AR*					x	
6.6.3BR*					x	
6.6.3CR*		x			x	
6.6.3DG*		x			x	
6.6.3ER*		x			x	
6.6.3FR*		x			x	
6.6.4R				x		x
6.6.4BR*				x		x
6.6.4CR*				x		x
6.6.4DG*				x		x

Rule	ICVC	ACD	Any other directors of an ICVC	Deposit-ary of an ICVC	Au- thorised fund manager of an AUT or ACS	Deposit- ary of an AUT or ACS
6.6.5R		x	x	x	x	x
6.6.5AR*		x			x	
6.6.5BG*		x			x	
6.6.6R		x			x	
6.6.7R	x	x				
6.6.8R					x	x
6.6.9R					x	x
6.6.10R		x		x	x	x
6.6.11G				x		x
6.6.12R				x		x
6.6.13R		x	x	x	x	x
6.6.14R		x		x	x	x
6.6.15R	x	x	x	x		x
6.6.15AR*		x			x	
6.6.16G		x		x	x	x
6.6.17R		x	x	x	x	x
6.6.18G		x	x	x	x	x
6.6.19R		x	x		x	
6.6.20R		x	x		x	
6.6.21R		x	x		x	
6.6.22G		x	x		x	
6.6.23E		x	x		x	
6.6.24G		x	x		x	
6.6.25R		x	x		x	
6.6.26G		x	x		x	
6.6.27R		x	x		x	
Notes:	(1)	"x" means "applies", but not every paragraph in every rule will necessarily apply.				
	(2)	* COLL 6.6.3A R and COLL 6.6.3B R only apply to <i>authorised contractual scheme managers</i> of ACSs.				
	(3)	* COLL 6.6.5A R and COLL 6.6.5B G only apply to ACDs of ICVCs which are <i>umbrellas</i> and <i>authorised contractual scheme managers</i> of <i>co-ownership schemes</i> which are <i>umbrellas</i> .				
	(4)	* COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).				
	(5)	COLL 6.6.20R to COLL 6.6.27R have a special application as set out in COLL 6.6.19R.				
	(6)	*COLL 6.6.3CR, COLL 6.6.3DG, COLL 6.6.3ER and COLL 6.6.3FR apply only to the <i>authorised fund manager</i> of a FIIA.				

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Au- thorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
	(7)	*COLL 6.6.4BR, COLL 6.6.4CR, and COLL 6.6.4DG apply only to the <i>depositary</i> of a <i>FIIA</i> .				

Functions of the authorised fund manager

6.6.3

R

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the fund*;
 - (b) the applicable rules;
 - (c) the most recently published *prospectus*;
 - (d) for an *ICVC*, the *OEIC Regulations*; and
 - (e) where applicable, the *Money Market Funds Regulation*.
- (2) The *authorised fund manager* must take such steps as necessary to ensure compliance with the *rules* that impose obligations upon the *ICVC*.
- (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depositary* in writing how rights attaching to the ownership of the *scheme property* are to be exercised, but not where ■ COLL 6.6.13 R (2) (Exercise of rights in respect of the *scheme property*) applies; and
 - (c) take action immediately to rectify any breach of ■ COLL 6.3 and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue of units*, the rectification must, (unless the *depositary* otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:
 - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
 - (ii) by the *ACD* to the *ICVC*;
 - (iii) by the *ICVC* to the *ACD*;
 - (iv) by the *authorised fund manager* to the *depositary* of the *AUT* or *ACS*; or
 - (v) by the *depositary* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*.
- (4) Rectification under (3)(c) need not, unless the *depositary* so directs, extend to any such reimbursement or payment where it appears to the *depositary* such breach, is of minimal significance.

Functions of the authorised contractual scheme manager in relation to ACS units

6.6.3A

R

- (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *UCITS scheme* or a *non-UCITS retail scheme* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or
 - (c) *person* who already holds *units* in the *scheme*.
- (2) The *authorised contractual scheme manager* of an *authorised contractual scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder*, unless that *person* meets the criteria within (1)(a) to (c).
- (3) The *authorised contractual scheme manager* will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

Redemption of ACS units by an authorised contractual scheme manager

6.6.3B

R

The *authorised contractual scheme manager* of an *authorised contractual scheme* must *redeem units* in the *scheme* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in ■ COLL 6.6.3AR (1)(a) to ■ (c).

Additional functions of an authorised fund manager of a FIIA

6.6.3C

R

The *authorised fund manager* of a *FIIA* must establish, implement and maintain an adequate liquidity management contingency plan for exceptional circumstances which sets out:

how the *authorised fund manager* will respond to a liquidity risk crystallising;

the range of liquidity tools and arrangements which it may deploy in such exceptional circumstances, any operational challenges associated with the use of such tools and the likely consequences for investors;

the procedures for working with the *depository* in the event the *authorised fund manager* must deploy these tools and arrangements;

how the *authorised fund manager* will work with its delegates, such as third-party administrators, and other relevant third parties including *intermediate unitholders*, to:

- (a) deploy the liquidity management tools and arrangements;
- (b) communicate their use in a timely way to *unitholders*; and
- (c) implement any other part of this contingency plan;

any operational challenges likely to arise from working with relevant third parties identified at (4); and

communication arrangements for internal and external concerned parties (including the FCA, investors and the media where necessary).

6.6.3D **G** Compliance with ■ COLL 6.6.3CR may enable a *full-scope UK AIFM* that is an *authorised fund manager* of a *FIIA* to meet some of its obligations under article 47(1)(e) of the *AIFMD level 2 regulation*.

6.6.3E **R**

- (1) The *authorised fund manager* of a *FIIA* must obtain written confirmation from any relevant third party identified in the contingency plan under ■ COLL 6.6.3CR(4) that the third party will be able to undertake the matters specified in (2) as soon as is reasonably practicable.
- (2) The matters specified for the purpose of (1) are that the relevant third party will, where necessary, be able to:
 - (a) deploy any liquidity management tools and arrangements on which the *authorised fund manager* plans to rely as part of its contingency plan;
 - (b) in a timely way, communicate the *authorised fund manager's* use of any such tools and arrangements to *unitholders*; and
 - (c) carry out any other part of the contingency plan which the *authorised fund manager* has identified as requiring action by that third party.

6.6.3F **R** The *authorised fund manager* of a *FIIA* must provide the *depository* on an ongoing basis with all relevant information it needs to comply with its obligations under ■ COLL 6.6.4BR.

General duties of the depository

6.6.4 **R**

- (1) The *depository* of an *authorised fund* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
 - (a) ■ COLL 5 (Investment and borrowing powers);
 - (b) ■ COLL 6.2 (Dealing);
 - (c) ■ COLL 6.3 (Valuation and pricing);
 - (d) ■ COLL 6.8 (Income: accounting, allocation and distribution);
 - (e) any provision of the *instrument constituting the fund or prospectus* that relates to the provisions referred to in (a) to (d); and
 - (e) where applicable, the provisions of the *Money Market Funds Regulation* relating to investment and borrowing powers, dealing, valuation and pricing, and income.
- (2) The *depository* must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:

- (a) the *authorised fund manager* is adopting appropriate procedures to ensure that the *price of a unit* is calculated for each *valuation point* in accordance with ■ COLL 6.3 or, where applicable, the *Money Market Funds Regulation*; and
 - (b) the *authorised fund manager* has maintained sufficient records to show compliance with ■ COLL 6.3 .
- (3) The *depository*, when acting in its capacity as *depository*, must act solely in the interests of the *unitholders*.
- (4) The *depository*:
- (a) must also take reasonable care to ensure that;
 - (i) the *authorised fund manager* considers whether or not to exercise the power provided by ■ COLL 6.3.8 R (Dilution) and, if applicable, the rate or amount of any *dilution levy* or *dilution adjustment* that is imposed;
 - (ii) the *authorised fund manager* has in relation to (i), taken account of all factors that are material and relevant to the *authorised fund manager's* decision; and
 - (iii) when the *authorised fund manager* considers whether or not to exercise the power under ■ COLL 6.3.8 R, the *authorised fund manager* has acted in accordance with the restrictions imposed by that *rule*; and
 - (b) has no duty in respect of the *authorised fund manager's* exercise of the discretion referred to in (a).
- (5) [deleted]
- (6) [deleted]
- (7) [deleted]

6.6.4A **G** [deleted]

Specific duties of a depository: oversight of the liquidity management of a FIIA

6.6.4B **R** The *depository* of a *FIIA* must:

- (1) regularly make its own assessment of the liquidity profile of the *FIIA* and the liquidity risks presented by the *scheme property* of a *FIIA*;
- (2) take reasonable care to oversee the *authorised fund manager's* liquidity management systems and procedures on an ongoing basis, using the assessment it has made under (1), to ensure the *FIIA* is managed in accordance with the following *COLL rules* and, in the case of a *FIIA* managed by a *full-scope UK AIFM*, the following *FUND rules* and provisions in the *AIFMD level 2 regulation*:
 - (a) ■ COLL 4.2.5R(3)(pa);
 - (b) ■ COLL 6.6.3CR and ■ COLL 6.6.3ER;
 - (c) ■ FUND 3.2.2R(8);

- (d) ■ FUND 3.2.5R;
 - (e) ■ FUND 3.6.3R;
 - (f) article 44(1) and (2)(c) of the *AIFMD level 2 regulation*;
 - (g) articles 46 to 49 of the *AIFMD level 2 regulation*; and
 - (h) article 108 of the *AIFMD level 2 regulation*; and
- (3) establish an escalation procedure when instances of potential non-compliance with the *rules* and provisions set out in paragraph (2) are identified, the details of which must be made available to the *FCA* upon request.

6.6.4C **R** The *depository* of a *FIIA* managed by a *small authorised UK AIFM* must not delegate its functions under ■ COLL 6.6.4BR to one or more third parties, except in relation to supporting administrative or technical tasks that are linked to these functions.

6.6.4D **G** Subject to certain specified exceptions, the *depository* of a *FIIA* managed by a *full-scope UK AIFM* is generally prohibited from delegating its functions (see in particular, ■ FUND 3.11.26R (Delegation: general prohibition) and ■ FUND 3.11.28R (Delegation: safekeeping)).

Duties of the authorised fund manager and the depository under the general law

- 6.6.5** **R**
- (1) The duties and powers of the *authorised fund manager*, the *directors* of an *ICVC* and the *depository* under the *rules* in this sourcebook and under the *instrument constituting the fund* are in addition to the powers and duties under the general law.
 - (2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the *rules* in this sourcebook, the *instrument constituting the fund*, the *OEIC Regulations*, or the *Money Market Funds Regulation*.

Duties of the ACD of an ICVC or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

- 6.6.5A** **R** Where reasonable grounds exist for an *ACD* of an *ICVC* or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 3.2.6 R(22A) (ICVCs: Umbrella schemes - principle of limited recourse) and ■ COLL 3.2.6 R(22B) (Co-ownership schemes: Umbrella schemes - principle of limited recourse)) the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:
- (1) promptly investigate whether there is an inconsistency; and
 - (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

6.6.5B **G** In deciding what steps are appropriate to remedy the inconsistency, the *ACD* of an *ICVC* or the *authorised contractual scheme manager* of a *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the *foreign law contract*.

Maintenance of records

6.6.6 **R**

- (1) Subject to (5) and (6), the *authorised fund manager* must make and retain for six years such records as enable:
 - (a) the *scheme* and the *authorised fund manager* to comply with the *rules* in this sourcebook and the *OEIC Regulations*; and
 - (b) it to demonstrate at any time that such compliance has been achieved.
- (2) Subject to (5) and (6), the *authorised fund manager* must make and retain for six years a daily record of the *units* in the *scheme* held, acquired or disposed of by the *authorised fund manager*, including the *classes* of such *units*, and of the balance of any acquisitions and disposals.
- (3) Where relevant, an *authorised fund manager* must make and retain for a period of six years a daily record of:
 - (a) how it calculates and estimates *dilution*; and
 - (b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.
- (4) The *authorised fund manager* must on the request of the *depository* immediately supply it with such information concerning the management and administration of the *authorised fund* as the *depository* may reasonably require.
- (5) Where the *authorised fund manager* or the *depository* transfers an *eligible CIS amount* which is a *dormant asset* or *unwanted asset money* to a *dormant asset fund operator*, the *authorised fund manager* must retain the relevant records specified in (6) for a period of six years from the date on which:
 - (a) (in relation to the transfer of a *dormant asset*) the *person* to whom those records relate made a *repayment claim*; or
 - (b) (in relation to *unwanted asset money*) the *person* confirmed their wish for the *unwanted asset money* to be transferred.
- (6) (a) Whenever an *eligible CIS amount* is transferred to a *dormant asset fund operator*, the records to be retained under (5) include:
 - (i) the full names of each relevant *unitholder*; and
 - (ii) the name of the *scheme* to which the converted *units* relate, including, where the *scheme* is a *sub-fund*, the name of its *umbrella*.

- (b) Where the *eligible CIS amount* falls within section 9(3)(a) of the Dormant Assets Act 2022 (an amount owing by virtue of the conversion of one or more *units* into a right to payment), the records must also include:
- (i) the number and *class* of *units* converted;
 - (ii) the date on which the *units* were converted and the *price per unit*;
 - (iii) a record of any interest due, *fees* and *charges* that would have been paid and any other adjustments (such as a *dilution levy*) in respect of the converted *units* that would affect the amount of a *repayment claim*; and
 - (iv) for the period beginning with the date of the conversion of *units* and ending with the date on which a *person* establishes a *repayment claim* in respect of the *units*:
 - (A) in the case of a *class* of *units* which pays income, a record of the distribution rate per *unit* for each distribution of income paid;
 - (B) in the case of any sub-division or consolidation of *units*, or any mandatory conversion of *units* from one *class* to another *class* of the same *authorised fund* or *sub-fund*, a record of the basis of calculation for the action; and
 - (C) in the case of the *cancellation* of all *units* in the *authorised fund* or *sub-fund* under a *scheme of arrangement* by which new *units* are *issued* in another *authorised fund* or *sub-fund* in exchange, a record of the basis of calculation for the exchange.
- (c) Where the transfer is of *eligible redemption proceeds*, an *eligible distribution of income* or *orphan monies*, the records must include:
- (i) a note of whether the transfer relates to *eligible redemption proceeds*, an *eligible distribution of income* or *orphan monies*;
 - (ii) where the transfer is of *eligible redemption proceeds*, the date on which the *units* were *redeemed*;
 - (iii) where the transfer is of an *eligible distribution of income*:
 - (A) the distribution date, and the number and *class* of *units* to which the transfer relates; and
 - (B) the distribution rate per *unit* for each distribution paid;
 - (iv) the value of the relevant *eligible CIS amount* transferred; and
 - (v) a record of the interest due, *fees* and *charges* that would have been paid and any other adjustments that would affect the amount of the *repayment claim* in respect of the transferred *eligible CIS amount*.
- (d) Where the transfer is of *unwanted asset money*, the records must include:
- (i) a note that the transfer relates to *unwanted asset money*;
 - (ii) the value of the *unwanted asset money* transferred;

- (iii) details of the *unitholder's* confirmation that they wish the *unwanted asset money* to be transferred to a *dormant asset fund operator*; and
- (iv) details of the declaration required by section 21(2)(a)(ii) of the Dormant Assets Act 2022.

Maintenance of capital: notification

6.6.7 **R** The ACD must immediately notify the FCA in writing if the ICVC's capital falls below the minimum or exceeds the maximum stated in the *instrument of incorporation*.

Auditor: AUTs or ACSs

- 6.6.8 **R**
 - (1) The *authorised fund manager* of an AUT or ACS must, upon any vacancy for the position of auditor for an AUT or ACS, with the approval of the *depository*, appoint as auditor for the AUT or ACS a *person* qualified for appointment as auditor of an *authorised person*.
 - (2) The audit fees of the auditor are determined by the *authorised fund manager* with the approval of the *depository*.
 - (3) The *authorised fund manager* of an AUT or ACS may, with the approval of the *depository*, at any time, remove the auditor of an AUT or ACS; this power exists notwithstanding anything in any agreement between the *persons* concerned.

Returns: AUTs

6.6.9 **R** The *manager* of an AUT must prepare and supply to the *trustee* the returns required to be submitted by the *trustee* to HM Revenue and Customs.

Dealings in scheme property

- 6.6.10 **R**
 - (1) The *authorised fund manager* may give instructions to deal in the property of the *scheme*.
 - (2) The *authorised fund manager* must obtain the consent of the *depository* for the acquisition or disposal of immovable property.
 - (3) Where the *depository* is of the opinion that a deal in property is not within the *rules* in this sourcebook and the *instrument constituting the fund*, the *depository* may require the *authorised fund manager* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
 - (4) Where the *depository* is of the opinion that:
 - (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a *person* other than the *depository*; and
 - (b) the *depository* cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other *person*;

the *authorised fund manager* must, if the *depository* so requests, either cancel the transaction or make a corresponding disposal.

Duty to inform the FCA

6.6.11

G

■ SUP 15.3 (General notification requirements) contains *rules* and *guidance* on matters that should be notified to the *FCA*. Such matters include, but are not limited to, any circumstance that the *depository* becomes aware of whilst undertaking its functions or duties in ■ COLL 6.6.4 R (1) (General duties of the *depository*) and (where applicable) ■ COLL 6.6.4BR (Specific duties of a *depository*: oversight of the liquidity management of a *FIIA*), that the *FCA* would reasonably view as significant.

Control by the depository over the scheme property

6

6.6.12

R

- (1) The *depository* of an *authorised fund* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:
 - (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the *scheme*;
 - (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depository*, its nominee, or (in the case of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*) a *person* retained by it under ■ COLL 6.6.15R(4) (Committees and delegation);
 - (c) take into its custody or under its control documents of title to the *scheme property* other than for transactions in *derivatives* or forward transactions; and
 - (d) ensure that any transaction in *derivatives* or a forward transaction is entered into so as to ensure that any resulting benefit is received by the *depository*.
- (2) The *depository* is responsible for the collection of income due to be paid for the account of the *authorised fund*.
- (3) The *depository* must keep for six years such records as are necessary:
 - (a) to enable it to comply with the *rules* in this sourcebook; and
 - (b) to demonstrate that it has achieved such compliance.
- (4) Where the *authorised fund* is a *UCITS scheme*, this *rule* applies to the *scheme's depository* to the extent the provisions are consistent with the requirements of the *UCITS level 2 regulation*.
- (5) Where the *authorised fund* is a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, this *rule* applies to the *scheme's depository* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[Note: Articles 12 to 14 of the *UCITS level 2 regulation* and articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depository* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*.]

Exercise of rights in respect of the scheme property

6.6.13

R

- (1) The *depository* must take all necessary steps to ensure that instructions given to it by the *authorised fund manager* for the exercise of rights attaching to the ownership of *scheme property* are carried out.
- (2) Where the *scheme property* of an *authorised fund* contains *units* in any other *scheme* managed or otherwise operated by the *authorised fund manager* of the *AUT* or *ACS* or, as the case may be, by any *director* of the *ICVC* or by any *associate* of either, the *depository* must exercise any voting rights associated with those *units* in accordance with what he reasonably believes to be the interests of the *unitholders* in the *authorised fund*.

Duties of the depository and the authorised fund manager: investment and borrowing powers

6.6.14

R

- (1) The *authorised fund manager* must avoid the *scheme property* being used or invested contrary to ■ COLL 5, or any provision in the *instrument constituting the fund* or the *prospectus* as referred to in ■ COLL 5.2.4 R (Investment powers:general), ■ COLL 5.6.4 R (Investment powers: general) and, where the scheme is a *regulated money market fund*, the *Money Market Funds Regulation*, except to the extent permitted by (3)(b).
- (2) The *authorised fund manager* must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).
- (3) The *authorised fund manager* must restore compliance with *COLL 5* as soon as reasonably practicable having regard to the interests of the *unitholders* and, in any event, within the period specified in (5) or, when applicable, (6) where:
 - (a) the *scheme property* is:
 - (i) used or invested contrary to ■ COLL 5 (other than a provision excusing a failure to comply on a temporary basis); and
 - (ii) the contravention is beyond the control of both the *authorised fund manager* and the *depository*; or
 - (b) there is a transaction ("subsequent transaction") deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an *investment* ('original *investment*') of the scheme if:
 - (i) the subsequent transaction, but for this *rule* would constitute a breach of ■ COLL 5; and
 - (ii) at the time of the acquisition of the original *investment*, it was reasonable for the *authorised fund manager*, to expect that a breach would not be caused by the subsequent transaction; and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the *depository* or the *authorised fund manager*.

- (4) Immediately upon the *depository* becoming aware of any breach of any provision listed in (1), it must ensure that the *authorised fund manager* complies with (2).
- (5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):
 - (a) for six *months*; or
 - (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards)) or COLL 5.6.13R (Permitted transactions (derivatives and forwards)), until the close of business five *business days* later; or
 - (c) where the transaction relates to an immovable, for two years.
- (6) The period specified at (5)(b) is extended where:
 - (a) the transaction involved a delivery of a *commodity*, from five to twenty *business days*;
 - (b) the reason for the contravention in (3)(a) is the inability of the *authorised fund manager* to *close out* a transaction because of a limit in the number or value of transactions imposed by an *eligible derivatives* market, until five *business days* after:
 - (i) the inability resulting from any such limit is removed; or
 - (ii) it becomes, to the knowledge of the *authorised fund manager*, reasonably practicable and reasonably prudent for the transaction to be *closed out* in some other way.

Committees and delegation

6.6.15

R

- (1) The *directors* of an *ICVC* may delegate to any one or more of their number any of the *directors'* powers or duties but remain responsible for the acts or omissions of any such *directors*.
- (1A) The *directors* of an *ICVC* have the power to retain the services of anyone to assist in the performance of their functions, subject to the duty of the *ACD* to comply with ■ COLL 6.6.15A R.
- (2) [deleted]
- (3) [deleted]
- (4) The *depository* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM* may delegate any function to any *person* save:
 - (a) the *ICVC* or any *director* of the *ICVC* or the *authorised fund manager* of a *scheme*, to assist the *depository* to perform:
 - (i) any function of oversight in respect of the *scheme*, its *directors* or the *authorised fund manager* as the case may be; or
 - (ii) any function of *custody* or control of the *scheme property*;
 - (b) an *associate* of the *ICVC* or of any of the *directors* of the *ICVC* or of the *authorised fund manager* of the *scheme* (as the case may be) to assist the *depository* to perform any function in (a)(i); or

- (c) a *nominee company* or anyone else to assist it to perform the function of being a *custodian* of *documents* evidencing title to *scheme property* of the *scheme* unless the arrangements with the *custodian* prohibit the *custodian* from releasing the *documents* into the possession of a third party without the consent of the *depository*.
- (5) Where a *depository* retains services under (4):
 - (a) if it retains the services of a *director* of the *ICVC*, or an *associate* of such a *director* or its own *associate*, or the *authorised fund manager* of a *scheme* or that *authorised fund manager's* *associate*, then its liability for those services shall remain unaffected; and
 - (b) in any other case, it will not be held responsible by virtue of the *rules* in *COLL* for any act or omission of the *person* so retained if it can show that:
 - (i) it was reasonable for it to obtain assistance to perform the function in question;
 - (ii) the *person* retained was and remained competent to provide assistance in the performance of the function in question; and
 - (iii) it had taken reasonable care to ensure that the assistance in question was provided by the *person* retained in a competent manner.
- (6) Where ■ COLL 6.5.5 R (4) (Other directors) applies, the *directors* have, in respect of the functions of the *ACD* under ■ COLL 6.6.3 R (Functions of the authorised fund manager), the same rights and responsibilities as for an *ACD* under this *rule* and ■ COLL 6.6.15A R.

6.6.15A **R**

- (1) This *rule* applies to:
 - (a) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* or *ICVC* is a *UCITS* *scheme*; and
 - (aa) a *small authorised UK AIFM* that is the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC* that is a *non-UCITS* *retail* *scheme*.
 - (b) [deleted]
- (2) The *authorised fund manager* has the power to retain the services of any *person* to assist it in the performance of its functions, provided that:
 - (a) a mandate in relation to *managing investments* of the *scheme* is not given to:
 - (i) the *depository*; or
 - (ii) any other *person* whose interests may conflict with those of the *authorised fund manager* or *unitholders*; or
 - (iii) an *authorised person* operating from an establishment in the *United Kingdom* unless such *person* has a *Part 4A* *permission* to *manage investments*; or
 - (iv) any other *person* operating from an establishment in a country other than the *United Kingdom* unless such *person*:

- (A) is authorised or registered in such country for the purpose of asset management; and
 - (B) is subject to prudential supervision in such country;
- and in addition if that *person* is not an a *UK firm*, co-operation is ensured between the *FCA* and the *overseas regulator* of that *person*;

- (b) the *authorised fund manager* ensures that at all times it can monitor effectively the relevant activities of any *person* so retained;
- (c) the mandate permits the *authorised fund manager* to:
 - (i) give further instructions to the *person* so retained; and
 - (ii) withdraw the mandate with immediate effect when this is in the interests of the *unitholders*;
- (d) the mandate does not prevent effective supervision of the *authorised fund manager* and it must not prevent the *authorised fund manager* from acting, or the *scheme* from being managed, in the best interests of the *unitholders*; and
- (e) having regard to the nature of the functions to be carried out under the mandate, the *person* to whom the mandate is given must be qualified and capable of undertaking those functions.

- (3) Subject to the provisions of the *OEIC Regulations* and ■ COLL 6.6.15 R (1) and ■ (1A), where services are retained under (2), the responsibility which the *authorised fund manager* had in respect of such services prior to that retention of services will remain unaffected.

[Note: article 13 of the *UCITS Directive*]

Delegation: guidance

6.6.16

G

- (1) *Directors* of an *ICVC*, *authorised fund managers* and *depositaries* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.
- (2) ■ SUP 15.8.6 R (Delegation by UCITS management companies) requires the *authorised fund manager* of a *UCITS scheme* to inform the *FCA* before it delegates one of its duties to another *person*.
- (3) For the purpose of ■ COLL 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the *FCA* has entered into a co-operation agreement providing for the exchange of information with the relevant *overseas regulator* which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that *UCITS schemes*, *management companies* and *depositaries* cannot be individually identified, without prejudice to cases covered by criminal law.

- (4) ■ COLL 6.6B sets out the *FCA's rules and guidance* that apply to a *depository* of a *UCITS scheme* seeking to delegate any of its functions.

Conflicts of interest

6.6.17

R

- (1) The *authorised fund manager*, any other *director* of an *ICVC* and the *depository* must take reasonable care to ensure that a transaction within (a) to (f) is not carried out on behalf of the *scheme*:
- (a) putting cash on *deposit* with an *affected person* unless that *person* is an *eligible institution* or an *approved bank* and the arm's length requirement in (2) is satisfied;
 - (b) lending *money* by an *affected person* to, or for the account of, the *scheme*, unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's length requirement in (2) is satisfied;
 - (c) the dealing in property by an *affected person*, to, or with, the *scheme* (or the *depository* for the account of the *scheme*), unless (3) applies;
 - (d) the vesting of property (other than cash) by an *affected person* in the *scheme* or the *depository* for the account of the *scheme* against the *issue* of *units* in the *scheme*, unless:
 - (i) (3) applies; or
 - (ii) the purpose of the vesting is that the whole or part of the property of a *body corporate* or a *collective investment scheme* becomes the first property of the *scheme* and the *unitholders* of *shares* or *units* in the *body corporate* or *collective investment scheme* become the first *unitholders* in the *scheme*;
 - (e) the acquisition of *scheme property* by an *affected person* from the *scheme* (or the *depository* acting for the account of the *scheme*), unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies, or unless (3) applies; and
 - (f) transactions within COLL 5.4 (Stock lending) by an *affected person* with, or in relation to, the *scheme* unless the arm's length requirement in (2) is satisfied.
- (2) Any transaction in (1)(a),(b) or (f) must be at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length between the *affected person* and an independent party.
- (3) There is no breach of (1)(c), (d) or (e) if the transaction meets the requirements of (4) (best execution *on-exchange*), (5) (independent valuation) or (6) (arm's length transaction).
- (4) There is best execution *on-exchange* for the purposes of (3) if:
- (a) the property is an *approved security* or an *approved derivative*;
 - (b) the transaction is effected under the rules of the relevant exchange with or through a *person* who is bound by those rules;
 - (c) there is evidence in writing of the effecting of the transaction and of its terms; and

- (d) the *authorised fund manager* has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the *scheme*.
- (5) There is independent valuation for the purposes of (3) if:
 - (a) the value of the property is certified in writing for the purpose of the transaction by a *person* approved by the *depository* as:
 - (i) independent of any *affected person*; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the *depository* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to *unitholders*.
- (6) There is an arm's length transaction for the purposes of (3) if:
 - (a) paragraph (4)(a) is not satisfied;
 - (b) it is not reasonably practicable to obtain an independent valuation under (5); and
 - (c) the *depository* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in (2).

Conflicts of interest: guidance

- 6.6.18 G
 - (1) [deleted]
 - (2) Regulation 44 of the *OEIC Regulations* (Invalidity of certain transactions involving directors) is relevant to the application of ■ COLL 6.6.17 R.

Application of assessment of value and independent director rules

- 6.6.19 R ■ COLL 6.6.20R to ■ COLL 6.6.26G apply to:
 - (1) an *authorised fund manager* (other than one which is managing an *authorised fund* under a *temporary permission*) of an *AUT*, *ACS* or *ICVC*.
 - (2) [deleted]

Assessment of value

- 6.6.20 R
 - (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.
 - (2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class* of *units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

- 6.6.20A G The *authorised fund manager* of a *scheme* with a *side pocket class* should note the modified application of the assessment of value *rules* in

■ COLL 7.8.34R (Modified application of the assessment of value rules) and the related *guidance* in ■ COLL 7.8.35G.

Table: minimum considerations – assessment of value

6.6.21

R

This table belongs to ■ COLL 6.6.20R (Assessment of value).

Quality of service

(1) The range and quality of services provided to *unitholders*.

Performance

(2) The performance of the *scheme*, after deduction of all payments out of *scheme property* as set out in the *prospectus* (in this *rule*, COLL 6.6.23E and COLL 8.5.19E, “charges”). Performance should be considered over an appropriate timescale having regard to the *scheme’s* investment objectives, policy and strategy.

AFM costs - general

(3) In relation to each charge, the cost of providing the service to which the charge relates, and when money is paid directly to *associates* or external parties, the cost is the amount paid to that *person*.

Economies of scale

(4) Whether the *AFM* is able to achieve savings and benefits from economies of scale, relating to the direct and indirect costs of managing the *scheme property* and taking into account the value of the *scheme property* and whether it has grown or contracted in size as a result of the *sale* and *redemption* of *units*.

Comparable market rates

(5) In relation to each service, the market rate for any comparable service provided:

- (a) by the *AFM*; or
- (b) to the *AFM* or on its behalf, including by a *person* to which any aspect of the *scheme’s* management has been delegated.

Comparable services

(6) In relation to each separate charge, the *AFM’s* charges and those of its *associates* for comparable services provided to *clients*, including for institutional mandates of a comparable size and having similar investment objectives and policies;

Classes of units

(7) Whether it is appropriate for *unitholders* to hold *units* in *classes* subject to higher charges than those applying to other *classes* of the same *scheme* with substantially similar rights.

6.6.22

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When assessing the quality of service provided under ■ COLL 6.6.21R(1):

- (1) the *AFM* should have regard to the quality of service it provides and the quality of service provided by any *person* to which any aspect of the *scheme’s* management has been delegated or which provides services to the *AFM* or on its behalf; and
- (2) the *AFM’s* assessment of quality of service is not confined to services provided directly to *unitholders* but may include services undertaken on their behalf by the *AFM*, such as consideration of the quality of the investment process used to make decisions about managing the *scheme property*.

6.6.23 **E** Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COLL 6.6A.2R, ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

6.6.24 **G** (1) ■ COLL 6.6A.2R applies to *AFMs* of *UCITS schemes* and in broad terms requires *AFMs* to act in the best interests of *unitholders*. In particular, ■ COLL 6.6A.2R(1) requires *AFMs* to ensure *unitholders* are treated fairly, ■ COLL 6.6A.2R(5) requires *AFMs* to act in such a way as to prevent undue costs being charged to any *scheme* it manages and its *unitholders* and ■ COLL 6.6A.2R(6)(b) requires an *AFM* to act solely in the interests of the *scheme* and its *unitholders*.

(2) ■ COBS 2.1.1R is the *clients best interests rule*, ■ COBS 2.1.4R(2) requires a *full-scope UK AIFM* to act in the best interests of the *AIF* it manages or the investors of the *AIF* it manages and the integrity of the market and ■ COBS 2.1.4R(3) requires the *AFM* to treat all investors fairly.

Independent directors

6.6.25 **R** (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural *persons*.

(2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.

(3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.

(4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.

(b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten year period referred to in (4).

6.6.26

G

- (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.
- (1) The role of the independent members should include providing input and challenge as part of the *AFM's* assessment of value in accordance with ■ COLL 6.6.20R. Independent members may be tasked with additional responsibilities, taking into consideration remuneration and conflict of interest *rules*.
- (2) A member of an *AFM's governing body* is unlikely to be considered independent if any of the following circumstances exist:
- (a) the *person* is an *employee* of the *AFM* or of an *affiliated company* or paid by them for any role (other than as an independent member of the *governing body* of an *affiliated company* or of a body exercising an independent governance function within the *AFM's* group) including participating in the *AFM's* share option or performance-related pay scheme; or
 - (b) the *person* has been an *employee* of the *AFM* or of an *affiliated company* within the *AFM's* group (other than having been an independent member of the *governing body* of an *affiliated company* or of a body exercising an independent governance function within the *AFM's* group) or of any *person* to which *collective portfolio management* of the *scheme* has been delegated, within the five years preceding their appointment to the *governing body*; or
 - (c) the *person* has, or had within the three years preceding their appointment, a material business relationship of any description with the *AFM* or with an *affiliated company* or with any *person* to which *collective portfolio management* of the *scheme* has been delegated, either directly or indirectly; or
 - (d) the *person* has received any sort of remuneration from the *AFM's* group (other than as an independent member of the *governing body* of an *affiliated company* of the *AFM* or of a body exercising an independent governance function within the *AFM's* group) within the five years preceding their appointment; or
 - (e) the *person* has a *close relative* who is an *officer* or other senior *employee* of the *AFM* or a company within the *AFM's* group.
- (3) The expertise and experience required under ■ COLL 6.6.25R(3) may have been gained through professional experience, public service, academia or otherwise, and does not need to relate to the financial services industry.
- (4) The effect of ■ COLL 6.6.25R(6) is that a *person* who serves on the *governing body* should be subject to appropriate contractual terms so that, when acting in the capacity of an independent member of the *governing body*, they are free to act in the interests of *unitholders* and should be able to do so without breaching their terms of employment.
- (5) An *AFM* should fill any vacancies that arise within the required number of independent members on its *governing body* as soon as possible and, in any event, within six *months*.

- (6) An *AFM* should consider indemnifying the independent members of its *governing body* against liabilities incurred while fulfilling their duties as such members.

Allocation of responsibility for compliance to an approved person

6.6.27

R

- (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 6.6.20R, ■ COLL 6.6.25R, and, as applicable, ■ COLL 6.6A.2R or ■ COBS 2.1.4R to an *approved person*.
- (2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.



6.6A Duties of AFMs in relation to UCITS schemes

Application

6.6A.1

R

- (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*.
 - (b) [deleted]
- (2) [deleted]
- (3) [deleted]

Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholder

6.6A.2

R

An *authorised fund manager* of a *UCITS scheme* must:

- (1) ensure that the *unitholders* of any such *scheme* it manages are treated fairly;
- (2) refrain from placing the interests of any group of *unitholders* above the interests of any other group of *unitholders*;
- (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- (4)
 - (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each *scheme* it manages, in order to comply with the duty to act in the best interests of the *unitholders*; and
 - (b) be able to demonstrate that the investment portfolio of each such *scheme* it manages is accurately valued;
- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*; and
- (6) in carrying out its functions act:
 - (a) honestly, fairly, professionally and independently; and
 - (b) solely in the interests of the *UCITS scheme* and its *unitholders*.

[Note: article 22 of the *UCITS Implementing Directive* and article 25(2) first paragraph of the *UCITS Directive*]

6.6A.3

G

- (1) Examples of malpractices for the purposes of ■ COLL 6.6A.2R (3) would include market timing and late trading, which may have detrimental effects on *unitholders* and may undermine the functioning of the market.
- (2) Examples of undue costs for the purposes of ■ COLL 6.6A.2R (5) would include unreasonable charges and excessive trading, taking into account the *scheme's* investment objectives and policy.

[Note: recital (18) of the *UCITS implementing Directive*]

Due diligence requirements of AFMs of UCITS schemes

6.6A.4

R

An *authorised fund manager* of a *UCITS scheme* must:

- (1) ensure a high level of diligence in the selection and ongoing monitoring of *scheme property*, in the best interests of the *scheme* and the integrity of the market;
- (2) ensure it has adequate knowledge and understanding of the assets in which any *scheme* it manages is invested;
- (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;
- (4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:
 - (a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the *scheme* before carrying out the investment; and
 - (b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;
- (5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
- (6) before entering into any arrangements of the type referred to in (5):
 - (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
 - (b) establish methods for the on-going assessment of the standard of performance of the third party.

[Note: article 23 of the *UCITS implementing Directive*]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 **R** The *authorised fund manager* of a *UCITS scheme* must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14(1)(e) of the *UCITS Directive*]

Strategies for the exercise of voting rights

6.6A.6 **R** (1) An *authorised fund manager* of a *UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, are to be exercised, to the exclusive benefit of the *scheme* concerned.

- (2) The strategy referred to in (1) must determine measures and procedures for:
- (a) monitoring relevant corporate events;
 - (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant *scheme*; and
 - (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

(3) An *authorised fund manager* of a *UCITS scheme* must make available to *unitholders*:

- (a) a summary description of the strategies referred to in (1); and
- (b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[Note: article 21 of the *UCITS implementing Directive*]

Appointment of a single depositary

6.6A.7 **R** An *authorised fund manager* of a *UCITS scheme* must (for each *scheme* it manages) ensure that:

- (1) a single *depositary* is appointed; and
- (2) the assets of the *UCITS scheme* are entrusted to the *depositary* for safekeeping in accordance with ■ COLL 6.6B.18R and ■ COLL 6.6B.19R.

[Note: article 22(1) and (5) of the *UCITS Directive*]

Eligible depositaries for UCITS schemes

6.6A.8 **R** An *authorised fund manager* must ensure that the *depositary* it appoints under ■ COLL 6.6A.7R is a *firm established* in the *United Kingdom* that has the *Part 4A permission of acting as trustee or depositary of a UK UCITS* and is one of the following:

- (1) a national central bank; or

- (2) a *credit institution*; or
- (3) a *firm* which:
 - (a) [deleted]
 - (b) either:
 - (i) is a *MiFID investment firm*; or
 - (ii) is an *investment management firm* to which IPRU(INV) 5 applies; and
 - (c) satisfies the non-bank depository organisational requirements in ■ COLL 6.6B.11R.

[Note: article 23(2)(a), (b) and (c) (first sentence) of the *UCITS Directive*]

6.6A.9 G For a *depository* to be established in the *United Kingdom*, it must have its registered office in the *United Kingdom*.

6.6A.10 R [deleted]

Written contract

6.6A.11 R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure that the appointment of the *depository* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depository* to perform its functions for the *scheme*.

[Note: article 22(2) of the *UCITS Directive*]

6.6A.12 G The written contract referred to in ■ COLL 6.6A.11R may cover more than one *scheme*.

6.6A.13 G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between:

- (1) (a) the *authorised fund manager* of a *UCITS scheme*; and
 - (b) [deleted]
- (2) the *depository*.



6.6B UCITS depositaries

Application

6.6B.1 **R** This section applies to the *depositary* of a *UCITS scheme* managed by an *authorised fund manager*.

General obligations

6.6B.2 **R** A *depositary* in carrying out its functions must act:

- (1) honestly, fairly, professionally and independently; and
- (2) solely in the interests of the *UCITS scheme* and its *unitholders*.

[Note: article 25(2) first paragraph of the *UCITS Directive*]

Conflicts of interest: depositaries

6.6B.3 **R** A *depositary* must not carry out activities with regard to the *UCITS scheme*, or the *authorised fund manager*, acting on behalf of the *scheme*, that may create conflicts of interest between the *scheme*, the *unitholders* in the *scheme* or the *authorised fund manager* and itself, unless:

- (1) the *depositary* has properly identified any such potential conflicts of interest;
- (2) the *depositary* has functionally and hierarchically separated the performance of its *depositary* tasks from its other potentially conflicting tasks; and
- (3) the potential conflicts of interest are properly managed, monitored and disclosed to the *unitholders* of the *scheme*.

[Note: article 25(2) second paragraph of the *UCITS Directive*]

Eligible depositaries for UCITS schemes

6.6B.4 **G** A *depositary* of a *UCITS scheme* must be a *firm* established in the *United Kingdom* that has the *Part 4A permission* of acting as trustee or depositary of a *UK UCITS*.

6.6B.5 **G** ■ **COLL 6.6A.8R** sets out the categories of *firms* that may be appointed by an *authorised fund manager* as the *depositary* of a *UCITS scheme*.

6.6B.6 G For a *depositary* to be established in the *United Kingdom*, it must have its registered office in the *United Kingdom*.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

6.6B.7 G A *depositary* appointed in accordance with ■ COLL 6.6A.8R(3) needs to satisfy the capital requirements in either:

- (1) ■ IPRU(INV) 5; or
- (2) MIFIDPRU

6.6B.8 R [deleted]
 [Editor's note: this requirement has been moved to ■ MIFIDPRU 4.4.6R.]

6.6B.9 G (1) [deleted]
 (2) [deleted]

6.6B.10 G [deleted]

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): organisational requirements

6.6B.11 R A *depositary* appointed under ■ COLL 6.6A.8R(3) must:

- (1) ensure that it has the infrastructure necessary to keep in custody *UCITS custodial assets* that can be registered in a *financial instruments* account opened in the *depositary's* books;
- (2) establish adequate policies and procedures sufficient to ensure the compliance of the *depositary*, including its managers and employees, with its obligations under the *regulatory system*;
- (3) have:
 - (a) sound administrative and accounting procedures and internal control mechanisms;
 - (b) effective procedures for risk assessment; and
 - (c) effective control and safeguard arrangements for information processing systems;
- (4) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- (5) arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable the *competent authority* to monitor the *firm's* compliance with the requirements under the *regulatory system*;

- (6) take reasonable steps to ensure continuity and regularity in the performance of its *depositary* functions by employing appropriate and proportionate systems, resources and procedures to perform its *depositary* activities;
- (7) ensure that all members of its *management body* and senior management at all times:
 - (a) are of sufficiently good repute; and
 - (b) possess sufficient knowledge, skills and experience;
- (8) ensure that its *management body* possesses adequate collective knowledge, skills and experience to be able to understand the *depositary's* activities, including the main risks; and
- (9) require each member of its *management body* and senior management to act with honesty and integrity.

[Note: article 23(2)(c) (second sentence) of the *UCITS Directive*]

6.6B.12 G A firm's attention is also drawn to the organisational requirements in SYSC. The *rules* and *guidance* in SYSC apply to a *depositary* appointed under ■ COLL 6.6A.8R(3), in accordance with the application provisions summarised in ■ SYSC 1.1A (Application) and provided in detail in ■ SYSC 1 Annex 1.

Written contract

6.6B.13 R

- (1) A *depositary* must ensure that its appointment as *depositary* of a *UCITS scheme* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depositary* to perform its functions for the *scheme*.

[Note: article 22(2) of the *UCITS Directive*]

6.6B.14 G The written contract referred to in ■ COLL 6.6B.13R may cover more than one *UCITS scheme*.

6.6B.15 G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between the *authorised fund manager* and the *depositary*.

Depositary functions: oversight

6.6B.16 R The *depositary* must, for each *UCITS scheme* for which it is appointed:

- (1) ensure that the *sale*, *issue*, *repurchase*, *redemption* and *cancellation* of *units* of the *scheme* are carried out in accordance with:
 - (a) the applicable national law;
 - (b) the *instrument constituting the fund*;
 - (c) the *prospectus*; and
 - (d) ■ COLL 6.2 (Dealing);

- (2) ensure that the price of the *units* of the *UCITS* is calculated in accordance with:
 - (a) the applicable national law;
 - (b) the *instrument constituting the fund*;
 - (c) the *prospectus*; and
 - (d) ■ COLL 6.3 (Valuation and pricing);
- (3) carry out the instructions of the *authorised fund manager*, unless they conflict with:
 - (a) the applicable national law; or
 - (b) the *instrument constituting the fund*; or
 - (c) the *prospectus*; or
 - (d) ■ COLL 5 (Investment and borrowing powers);
- (4) ensure that, in transactions involving the assets of the *UCITS scheme*, any consideration is remitted to the *scheme* within the usual time limits; and
- (5) ensure that the income of the *UCITS scheme* is applied in accordance with:
 - (a) the applicable national law;
 - (b) the *instrument constituting the fund*;
 - (c) the *prospectus*; and
 - (d) ■ COLL 6.8 (Income: accounting, allocation and distribution).

[Note: article 22(3) of the *UCITS Directive*]

Depository functions: cash monitoring

6.6B.17

R

The *depository* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:

- (1) all payments made by, or on behalf of, investors upon the subscription of *units* of the *scheme* have been received;
- (2) all cash of the *scheme* has been booked in cash accounts which are:
 - (a) opened in the name of:
 - (i) the *scheme*; or
 - (ii) the *authorised fund manager*, acting on behalf of the *scheme*; or
 - (iii) the *depository* acting on behalf of the *scheme*; and
 - (b) at:
 - (i) a central bank; or
 - (ii) a *CRD credit institution*; or
 - (iii) a bank authorised in a country other than an *EEA State*; and

(c) maintained in accordance with the principles in article 2 (safeguarding of client financial instruments and funds) of the *MiFID Delegated Directive*; and

(3) where cash accounts are opened in the name of the *depositary* acting on behalf of the *scheme* in accordance with (2)(a)(iii), the *depositary* must ensure that no cash of the entity referred to in (2)(b), and none of the *depositary's* own cash, is booked on such accounts.

[Note: article 22(4) of the *UCITS Directive*]

Depositary functions: safekeeping of financial instruments

6.6B.18

R

(1) The *depositary* of a *UCITS scheme* must hold in custody all *UCITS custodial assets* of the *scheme*.

(2) The *depositary* must ensure that all *UCITS custodial assets* that can be registered in a *financial instruments* account:

(a) are registered in the *depositary's* books within segregated accounts opened in the name of:

(i) the *UCITS scheme*; or

(ii) the *authorised fund manager*, acting on behalf of the *scheme*; and

(b) can be clearly identified as belonging to the *UCITS scheme* at all times in accordance with:

(i) the applicable law; and

(ii) the applicable provisions in ■ CASS 6.

[Note: article 22(5)(a) of the *UCITS Directive*]

Depositary functions: safekeeping of other assets

6.6B.19

R

The *depositary* must, for *UCITS scheme property* other than *UCITS custodial assets*:

(1) verify that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme*, is the owner of the assets based:

(a) on information or documents provided by the *authorised fund manager*; and

(b) where available, on external evidence; and

(2) maintain, and keep up to date, a record of those assets for which it is satisfied that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme*, is the owner.

[Note: article 22(5)(b) of the *UCITS Directive*]

Inventory of assets

6.6B.20 **R** The *depositary* must provide a comprehensive inventory of all the assets comprising the *scheme property* of the *UCITS scheme* to the *authorised fund manager* on a regular basis.

[Note: article 22(6) of the *UCITS Directive*]

Re-use of assets

6.6B.21 **R**

- (1) The *depositary* must not re-use *UCITS custodial assets* except:
 - (a) where permitted under ■ COLL 5.4 (stock lending); and
 - (b) when carrying out the instructions of the *authorised fund manager* on behalf of the *scheme*.
- (2) Re-use of the *UCITS custodial assets* comprises any transaction in relevant *scheme property* including, but not limited to, transferring, pledging, selling and lending.

[Note: article 22(7) first paragraph of the *UCITS Directive*]

Limitation on delegation

6.6B.22 **R** A *depositary* must not delegate its oversight function in ■ COLL 6.6B.16R or its cash monitoring function in ■ COLL 6.6B.17R to a third party.

[Note: article 22a(1) of the *UCITS Directive*]

6.6B.23 **G** The use of services provided by securities settlement systems, as specified in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by securities settlement systems in other countries, does not constitute a delegation by the *depositary* of its functions for the purposes of ■ COLL 6.6B.22R.

[Note: article 22a(4) of the *UCITS Directive*]

6.6B.24 **G**

- (1) (a) If a *depositary* performs part of its functions through a *branch* in an *EEA State*, this is not a delegation by the *depositary* of its functions to a third party.
 - (b) This is because ‘third party’ in ■ COLL 6.6B.22R means any party that is not part of the same legal entity as the *depositary*.
- (2) [deleted]
- (3) (a) A *depositary* that performs part of its functions through a *branch* in an *EEA State* should ensure that those arrangements do not impede the *depositary’s* ability to meet the *threshold conditions*.
 - (b) (i) In particular, the arrangements should not impede the *FCA’s* ability to supervise the *depositary* effectively.
 - (ii) For example, the *FCA’s* ability to supervise the *depositary* might be impeded if the *depositary* performed tasks other than administrative and supporting tasks from its *branch* in an *EEA State*.

Delegation: safekeeping

6.6B.25

R

A *depositary* may delegate the functions in ■ COLL 6.6B.18R and ■ COLL 6.6B.19R to one or more third parties if:

- (1) the tasks are not delegated with the intention of avoiding the requirements of the *UCITS Directive*, as implemented in this chapter;
- (2) the *depositary* can demonstrate that there is an objective reason for the delegation;
- (3) the *depositary*:
 - (a) has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
 - (b) continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
 - (i) of any third party to whom it has delegated parts of its tasks; and
 - (ii) of the arrangements of that third party in respect of the matters delegated to it; and
- (4) the *depositary* ensures that the third party delegate meets the following conditions at all times:
 - (a) the third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the *UCITS scheme* that have been entrusted to it;
 - (b) (subject to ■ COLL 6.6B.26R) for custody tasks in relation to *UCITS custodial assets*, the third party is subject to:
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
 - (ii) an external periodic audit to ensure that the *financial instruments* remain in its custody;
 - (c) the third party segregates the assets of the *depositary's* clients from its own assets and from the assets of the *depositary* in such a way that they can, at any time, be clearly identified as belonging to clients of a particular *depositary*;
 - (d) the third party takes all necessary steps to ensure that in the event of insolvency of the third party, *UCITS custodial assets* held in custody by the third party are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
 - (e) the third party complies with the general obligations and prohibitions relating to the *depositary* in:
 - (i) ■ COLL 6.6B.2R (General obligations);
 - (ii) ■ COLL 6.6B.3R (Conflicts of interests: depositaries);
 - (iii) ■ COLL 6.6B.13R (Written contract);
 - (iv) ■ COLL 6.6B.18R (Depositary functions: safekeeping of financial instruments);

(v) ■ COLL 6.6B.19R (Depositary functions: safekeeping of other assets); and

(vi) ■ COLL 6.6B.21R (Reuse of assets).

[Note: article 22a(2) and (3) of the *UCITS Directive*]

Delegation: third countries

6.6B.26

R

A *depositary* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in another country even though that entity does not satisfy the conditions in ■ COLL 6.6B.25R(4)(b)(i) if:

- (1) the law of that country requires those *UCITS custodial assets* to be held in custody by a local entity;
- (2) no local entity satisfies the conditions in ■ COLL 6.6B.25R(4)(b)(i);
- (3) the *depositary* delegates its functions to such a local entity only:
 - (a) to the extent required by the law of that country; and
 - (b) for as long as there is no local entity that satisfies the delegation conditions in ■ COLL 6.6B.25R(4)(b)(i);
- (4) the investors of the relevant *UCITS scheme* are informed before their investment:
 - (a) that such delegation is required due to legal constraints in the other country;
 - (b) of the reasons as to why the delegation is necessary; and
 - (c) of the risks involved in such a delegation; and
- (5) the *authorised fund manager*, acting on behalf of the *UCITS scheme*, has consented to the delegation arrangements before they become effective.

[Note: article 22a(3) of the *UCITS Directive*]

Delegation: sub-delegation

6.6B.27

R

A *depositary* must ensure that a third party to whom the *depositary* has delegated functions under ■ COLL 6.6B.25R does not, in turn, sub-delegate those functions unless the delegate complies with the same requirements that apply to the *depositary*, with any necessary changes, in relation to the delegation by the *depositary* of its functions in ■ COLL 6.6B.25R and ■ COLL 6.6B.26R.

[Note: article 22a(3) third paragraph of the *UCITS Directive*]

Delegation: omnibus account

6.6B.28

G

A *depositary* may delegate the safekeeping of assets to a third party that maintains an omnibus account for multiple *UCITS schemes*, provided it is a segregated common account that is segregated from the third party's own assets.

[Note: recital 22 of the *UCITS Directive*]

Provision of information

6.6B.29 G The requirements of SUP 2 (Information gathering by the FCA or PRA on its own initiative) apply to the depositary, under which it must enable the FCA to obtain, on request, all information that the depositary has obtained while discharging its duties and that the FCA considers necessary. [Note: article 26a first paragraph of the UCITS Directive]

Reporting of breaches

6.6B.30 R A depositary must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions which implemented the UCITS Directive before IP completion day. [Note: article 99d(5) of the UCITS Directive]

6.6B.31 G SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

Subordinate measures

6.6B.32 G Articles 3 to 17 of the UCITS level 2 regulation provide detailed rules supplementing this section.

6.7 Payments

Application

6.7.1 **R** This section applies in accordance with **■** COLL 6.7.2 R (Table of application).

Table of application

6.7.2 **R** Table of Application. This table belongs to **■** COLL 6.7.1 R.

Rule	ICVC	ACD	Depositary of an ICVC, AUT or ACS	Authorised fund manager of an AUT or ACS
6.7.1R to 6.7.5G	x	x	x	x
6.7.6G	x	x		x
6.7.7R		x		x
6.7.8G		x		x
6.7.9R		x		x
6.7.10R		x	x	x
6.7.11G		x	x	x
6.7.12R	x	x		x
6.7.13G	x	x		x
6.7.14R	x			
6.7.15R	x	x	x	x
6.7.16G		x	x	x
6.7.17R	x	x		x

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

- 6.7.3 **G**
- (1) This section assists in securing the *statutory objective* of protecting consumers through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.
 - (2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for *unitholders* of any increases in charges and payments to the *authorised fund manager*.

- (3) The *prospectus* should make adequate provision for payments from an *authorised fund*. This section:
 - (a) prohibits, or stipulates the conditions on which, the payments out of the *scheme property* can be made;
 - (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
 - (c) governs the allocation of payments between capital and income.

Payments out of scheme property

6.7.4

R

- (1) The only payments which may be recovered from the *scheme property* of an *authorised fund* are those in respect of:
 - (a) remunerating the parties operating the *authorised fund*;
 - (b) the administration of the *authorised fund*;
 - (c) the investment or safekeeping of the *scheme property*; or
 - (d) subject to (1A), donations to one or more *registered charities* for Sharia compliance purposes (in this *rule*, 'purification'), as set out in and authorised by the *prospectus* of the *scheme*.
- (1A) Payments relating to (1)(d) may only be made from the *income property* of the *scheme* where they represent the required percentage of the *income property* recognised for purification as advised by a *person* with appropriate knowledge of finance and Islamic law.
- (2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.
- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of *units* on behalf of *unitholders* rather than on behalf of the *authorised fund*.

Payments out of scheme property: guidance

6.7.5

G

- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with ■ COLL 4.2.5R (13) and ■ COLL 4.2.5R (14) (Table: contents of the *prospectus*).
- (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ■ COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.

- (4) Payments to third parties as referred to in ■ COLL 6.7.4 R (4) include payments to *platform service providers* and other similar platform services.
- (5) The *person* referred to in ■ COLL 6.7.4R(1A) should be independent of the *authorised fund manager* and any *registered charity* to which payments may be made.

Performance fees

6.7.6

G

- (1) For the *authorised fund manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the value or *price* of property of any description or index or other factor designated for the purpose (a "performance fee").
- (2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with ■ COLL 6.7.4 R. In determining whether the performance fee is consistent the *authorised fund manager* should have regard to factors such as:
 - (a) [deleted]
 - (b) where it is made on the basis of performance of the *authorised fund* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *authorised fund* and must be consistently applied;
 - (c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;
 - (d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
 - (e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and
 - (f) except where allowed by ■ COLL 6.7.4 R (1), there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.
- (3) In accordance with ■ COLL 4.2.5R (13) (Table: contents of prospectus) the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

6.7.6A

R

Any performance fee specified in the *prospectus* must be calculated on the basis of the *scheme's* performance after deduction of all other payments out of *scheme property*.

Charges on buying and selling units

6.7.7

R

- (1) No *person* other than the *authorised fund manager* may impose charges on *unitholders* or potential *unitholders* when they buy or sell units.

- (2) An *authorised fund manager* must not make any charge or levy in connection with:
 - (a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be:
 - (i) a fixed amount; or
 - (ii) calculated as a percentage of the *price* of a *unit*; or
 - (iii) calculated as a percentage of the amount being subscribed; or
 - (b) the *redemption* or *cancellation* of *units*, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.
- (3) This rule is subject to ■ COLL 6.3.8 R (Dilution) and ■ COLL 11.3.11 R (Obligations of the master UCITS).

Charges on buying and selling units: guidance

6.7.8

G

- (1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with ■ COLL 4.2.5 R (Table: contents of prospectus) and ■ COLL 4.3 (Approvals and notifications).
- (2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.
- (3) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be redeemed or cancelled for the purpose of the imposition of the *redemption charge*.
- (4) (a) For a *UCITS scheme*, article 10(2)(a) of the *KII Regulation* requires the *key investor information document* to disclose the maximum percentage that might be deducted as an entry charge from the investor's capital commitment.
 - (b) Where a *preliminary charge* is charged as a fixed amount or is calculated as a percentage of the *price* of a *unit*, the *AFM* should ensure that the actual amount charged, if it were expressed as a percentage of the amount being subscribed, does not exceed the maximum percentage stated as the entry charge in the *key investor information document*.
- (5) When a *preliminary charge* is calculated as a percentage of the *price* of a *unit*, the percentage amount should be added to:
 - (a) the *price* of a *unit* (for a *single-priced authorised fund*); or
 - (b) the *issue price* (for a *dual-priced authorised fund*).

- (6) In relation to a *regulated money market fund*, any charges for the *sale or redemption of units*, and any change to such charges, should reflect the restrictions of the *Money Market Funds Regulation*.

Charges for the exchange of units in an umbrella

6.7.9

R

For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

Allocation of payments to income or capital

6.7.10

R

- (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
- (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
 - (b) agree the treatment of any payment with the *depository*.
- (1A) Where there is at least one *class* of *units* that distributes income and one *class* of *units* that accumulates income in the same *authorised fund*, the *authorised fund manager* can determine that a payment be made from:
- (a) the *capital property* of the *authorised fund* for the *classes* of *units* that distribute income; and
 - (b) the *income property* of the *authorised fund* for *classes* of *units* that accumulate income,
 - if this is set out in and authorised by the *prospectus* of the *scheme*.
- (2) Where, for any *class* of *units* for any *annual accounting period*, the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

Allocation of payments to income or capital: guidance

6.7.11

G

- (1) Any payment as a result of effecting transactions for the *authorised fund* should be made from the *capital property* of the *scheme*.
- (2) Other than the payments in (1), all other payments should be made from income property in the first instance but may be transferred to the *capital account* in accordance with ■ COLL 6.7.10 R (1) (Allocation of payments to income or capital).
- (3) For payments transferred to the *capital property* of the *scheme* in accordance with (2), the *prospectus* should disclose the matters in ■ COLL 4.2.5R (14).
- (4) If the *authorised fund manager* wishes to make a change in relation to the allocation of payments, the procedures in ■ COLL 4.3 (Approvals and notifications) will be relevant.

Prohibition on promotional payments

- 6.7.12 **R**
- (1) No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale of units* in an *authorised fund*.
 - (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *key investor information document*, *NURS-KII document* or *key information document*, provided the *prospectus* states, in accordance with **COLL 4.2.5 R (13) and (14)** (Table: contents of the *prospectus*), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

Prohibition on promotional payments: guidance

- 6.7.13 **G**
- Examples of payments which are not permitted by **COLL 6.7.12 R** include:
- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
 - (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under **COLL 6.7.12 R (2)**).
 - (3) [deleted]

Movable or immovable property

- 6.7.14 **R**
- An *ICVC* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

Payment of liabilities on transfer of assets

- 6.7.15 **R**
- (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue of units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.
 - (2) The *ICVC* or the *depository* of the *ICVC*, *ACS* or *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
 - (a) there is nothing in the *instrument constituting the fund* of the *authorised fund* expressly forbidding the payment; and
 - (b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

6.7.16 **G** Except as provided in ■ COLL 6.3.5DR, an *affected person* is not liable to account to another affected person or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Allocation of scheme property

6.7.17 **R** For a *scheme* which is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only, must be allocated by the *authorised fund manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella* generally.



6.8 Income: accounting, allocation and distribution

Application

6.8.1

R

- (1) This section applies to an *authorised fund manager*.
- (2) ■ COLL 6.8.4 R (1) (Unclaimed, de minimis and joint unitholder distributions) also applies to the *depository* of an *authorised fund*.
- (3) Except in the case of ■ COLL 6.8.2 R (1) (Accounting periods) and ■ COLL 6.8.3 R (1) (Income allocation and distribution), ■ COLL 6.8 applies as if each *sub-fund* were a separate *authorised fund*.

Accounting periods

6.8.2

R

- (1) An *authorised fund* must have:
 - (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*.
- (2) A *half-yearly accounting period* begins when an *annual accounting period* begins and ends on:
 - (a) the *day* which is six *months* before the last *day* of that *annual accounting period*; or
 - (b) some other reasonable date as set out in the *prospectus* of the *scheme*.
- (3) The first *annual accounting period* of a *scheme* must begin:
 - (a) on the first *day* of any period of *initial offer*; or
 - (b) in any other case, on the date of the relevant *authorisation order*;

and in either case must end on the next *accounting reference date*, except where (4) applies.
- (4) When the *accounting reference date* of a *scheme* falls less than six *months* after the beginning of the first *annual accounting period*, that period may be extended until the subsequent *accounting reference date*.
- (5) Each *annual accounting period* of a *scheme* subsequent to the first period must begin immediately after the end of the previous period

and must end on the next *accounting reference date*, except where (6) or (6A) applies.

- (5A) Each *annual accounting period* or *half-yearly accounting period* must end either at the end of the *day* determined under this rule or, if the *authorised fund manager* so decides, at the last *valuation point* on that *day*.
- (6) Following a revision to the *prospectus* of the *scheme* that includes a change to the *accounting reference date*, the *annual accounting period* may be shortened, or extended by up to *six months*, so as to end on the new *accounting reference date*.
- (6A) If the *authorised fund manager* notifies the *depository* that a particular *annual accounting period* or *half-yearly accounting period* is to end on a specified *day*, which is not more than *seven days* after, and not more than *seven days* before, the *day* on which the period would otherwise end under this rule, that notice is to have effect provided it is given before the *day* on which the period would otherwise end.
- (7) The *authorised fund manager* must consult the *depository* and the *scheme's* auditor before shortening or extending an accounting period in accordance with (4) or (6).

6.8.2A

G

- (1) The effect of ■ COLL 6.8.1R(3) and ■ COLL 6.8.2R(4) is that when the *accounting reference date* of a *sub-fund* falls less than *6 months* after the beginning of the first *annual accounting period* of that *sub-fund*, that period may be extended until the subsequent *accounting reference date*.
- (2) When the *annual accounting period* of a *scheme* is extended under ■ COLL 6.8.2R(4) or ■ COLL 6.8.2R(6), resulting in a longer than usual period before the publication of reports to *unitholders*, the *authorised fund manager* should make summary information about the investment activities of the *scheme* available to *unitholders* during that period, in accordance with either (as applicable) Principle 12 (Consumer Duty) and ■ PRIN 2A, or *Principles 6* (Customers' interests) and 7 (Communications with clients) (see ■ PRIN 3.2.10R (Interaction between Principle 12 and Principles 6 and 7)).

Income allocation and distribution

6.8.2B

R

The allocation or distribution of the income of a *UCITS scheme* must be determined in accordance with its *instrument constituting the fund*, its *prospectus* and the general law of the *United Kingdom*.

[Note: article 86 of the *UCITS Directive*]

6.8.3

R

- (1) An *authorised fund* must have an *annual income allocation date*, which must be within *four months* of the end of the relevant *annual accounting period*.
- (2) An *authorised fund* may have *interim income allocation dates* and one or more *interim accounting periods* for each of those dates and,

if it does, the *interim income allocation date* must be within four months of the end of the relevant *interim accounting period(s)*.

- (3) An *authorised fund* must have a *distribution account* to which the amount of income allocated to *classes of units* that distribute income is transferred as at the end of the relevant accounting period.
- (3A) The amount available for income allocations must be calculated by:
 - (a) taking the net revenue after taxation determined in accordance with the *SORP*;
 - (b) making any transfers, to the extent permitted by the *prospectus*, between the *income account* and the *capital account* in order that the amount available for income allocations is calculated as if the revenue from *debt securities* had been determined disregarding the effect of:
 - (i) the change in the Retail Prices Index during the period, provided that the policy is to invest predominantly in *index-linked securities* and the transfer relates only to amounts in respect of index-linked gilt-edged securities; or
 - (ii) amortisation, provided that the amount available for income allocations is not less than if such transfers had not been made;
 - (c) making any other transfers between the *income account* and the *capital account* that are required in relation to:
 - (i) stock dividends;
 - (ii) *income equalisation* included in income allocations from other *collective investment schemes*;
 - (iii) the allocation of payments in accordance with ■ COLL 6.7.10 R (Allocation of payments to income or capital);
 - (iv) taxation;
 - (v) the aggregate amount of *income property* included in *units issued, cancelled* and converted during the period; and
 - (vi) amounts determined by the *authorised fund manager* to be the reportable income of other *collective investment schemes*.
- (4) If income is allocated during an accounting period:
 - (a) with effect from the end of the relevant *annual or interim accounting period*, the amount of income allocated to *classes of units* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes of units* are in *issue* during the period;
 - (b) the adjustment in (a) must ensure the *price of units* remains unchanged despite the transfer of income; and
 - (c) the amount of any interim allocation may not be more than the amount which, in the opinion of the *authorised fund manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

Allocation of income to different classes of unit

- 6.8.3A **G** In the case of *sub-funds* with more than one *class of units* in issue, the proportionate interests of each *class of units* in the amount available for income allocations should be determined in accordance with the *instrument constituting the fund*.

Unclaimed, de minimis and joint unitholder distributions

- 6.8.4 **R**
- (1) Unless (4) or **COLL 6.8.4AR** apply, any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.
 - (2) The *authorised fund manager* and the *depository* may agree a *de minimis* amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
 - (3) Distributions made to the first named joint *unitholder* on the *register* will be as effective a discharge to the *trustee* and *manager*, as if the first named joint *unitholder* had been a sole *unitholder*.
 - (a) This paragraph applies where:
 - (i) an *eligible distribution of income* remaining unclaimed is a *dormant asset*; and
 - (ii) the *instrument constituting the fund* and the *prospectus* permit the transfer of such *money* to a *dormant asset fund operator*.
 - (b) Where this paragraph applies:
 - (i) the *authorised fund manager* or (where relevant) the *depository* may seek to transfer the unclaimed distribution to a *dormant asset fund operator* in accordance with the *instrument constituting the fund* and the *prospectus*; and
 - (ii) if the *depository* makes such a transfer, the requirement in (1) (that the unclaimed distribution becomes part of the *capital property*) does not apply.

Unwanted asset money

- 6.8.4A **R**
- (1) This *rule* applies where:
 - (a) an *eligible distribution of income* is *unwanted asset money*; and
 - (b) the *instrument constituting the fund* and the *prospectus* permit the transfer of such *money* to a *dormant asset fund operator*.
 - (2) Where (1) applies, the *authorised fund manager* or (where relevant) the *depository* may transfer the *unwanted asset money* to a *dormant asset fund operator* in accordance with the *instrument constituting the fund*, the *prospectus* and section 21 of the Dormant Assets Act 2022.

Guidance: contents of the prospectus

6.8.5

G

■ COLL 4.2.5 R (Table: contents of prospectus) requires the details of
■ COLL 6.8.2 R, ■ COLL 6.8.3 R (1) and ■ COLL 6.8.3 R (2) and ■ COLL 6.8.4 R (1) and
■ COLL 6.8.4 R (2) to be contained in the *prospectus* as well as when, and how,
the distribution will be paid (e.g. by cheque or BACS) and also how any
unclaimed distributions are to be processed.

6.9 Independence, names and UCITS business restrictions

Application

6.9.1 **R** This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *directors* of an *ICVC*.

6.9.1A **G** Articles 20 to 24 of the *UCITS level 2 regulation* set out detailed provisions that must be read by the *authorised fund manager* and the *depository* of a *UCITS scheme* alongside ■ COLL 6.9.2G to ■ COLL 6.9.5G.

Independence of depositories and scheme operators

6.9.2 **G**

- (1) Regulation 15(8)(f) of the *OEIC Regulations* (Requirements for authorisation) requires independence between the *depository*, the *ICVC* and the *ICVC's directors*, as does section 243(4) of the *Act* (Authorisation orders) for the *trustee* and *manager* of an *AUT*, and section 261D(4) of the *Act* (Authorisation orders) for the *depository* and *authorised fund manager* of an *ACS*. ■ COLL 6.9.3 G to ■ COLL 6.9.5 G give the *FCA's* view of the meaning of independence of these relationships. An *ICVC*, its *directors* and *depository* or a *manager* and a *trustee* of an *AUT* or an *authorised fund manager* and *depository* of an *ACS* are referred to as "relevant parties" in this *guidance*.

- (2) There are at least three possible kinds of links between the relevant parties:

- (a) *directors* in common;
- (b) cross-shareholdings; and
- (c) contractual commitments.

- (3) If any of these links exist between the relevant parties, the *FCA* will have regard to ■ COLL 6.9.3 G to ■ COLL 6.9.5 G in determining whether there is independence.

Independence: influence by directors

6.9.3 **G**

- (1) Independence is likely to be lost if, by means of executive power, either relevant party could control the action of the other.

- (2) The board of one relevant party should not be able to exercise effective control of the board of another relevant party. Arrangements which might indicate this situation include quorum

provisions and reservations of decision-making capacity of certain directors.

- (3) For an *AUT* or *ACS*, the *FCA* would interpret the concept of *directors* in common to include any *directors* of associates of one relevant party who are simultaneously *directors* of the other relevant party.
- (4) For an *ICVC*, independence would not be met if:
 - (a) a *director* of the *ICVC* or any *associate* of the *director* is a *director*, an employee, or both of the *depository*; or
 - (b) a *director* of an *ICVC*:
 - (i) has a direct or indirect shareholding for investment purposes of more than 0.5% of the votes at a general meeting or a meeting of holders of the class of *share* concerned of the *depository* of that *ICVC*; or
 - (ii) has any other relationship with the *depository* which might reasonably be expected to give rise to a potential conflict of interest.

Independence: influence by shareholding

6.9.4

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Independence is likely to be lost if either of the relevant parties could control the actions of the other by means of shareholders' votes. The *FCA* considers this would happen if any shareholding by one relevant party and their respective *associates* in the other exceeds 15% of the voting *share* capital, either in a single *share* class or several *share* classes. The *FCA* would be willing, however, to look at cross-shareholdings exceeding 15% on a case-by-case basis to consider if there were exceptional grounds for concluding that independence was safeguarded by other means.

Independence: contractual commitments

6.9.5

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The *FCA* would encourage relevant parties to consult it in advance about its view on the consequences of any intended contractual commitment or relationship which could affect independence, whether directly or indirectly.

Undesirable or misleading names

6.9.6

G

- (1) Regulation 15(9) of the *OEIC Regulations*, and sections 243(8) and 261D(10) of the *Act* require that an *authorised fund's* name must not be undesirable or misleading. This section contains *guidance* on some specific matters the *FCA* will consider in determining whether the name of an *authorised fund* is undesirable or misleading. It is in addition to the requirements of regulation 19 of the *OEIC Regulations* (Prohibition on certain names).
- (2) The *FCA* will take into account whether the name of the *scheme*:
 - (a) is substantially similar to the name of another *authorised fund*;
 - (b) implies that the *authorised fund* has merits which are not, or might not be, justified;
 - (c) implies that the *authorised fund manager* has particular qualities, which may not be justified;

- (d) is inconsistent with the *authorised fund's* investment objectives or policy;
 - (e) implies that the *authorised fund* is not an *authorised fund* (for example, describing the *authorised fund* as a "plan" or "account" are unlikely to be acceptable); and
 - (f) might mislead investors into thinking that *persons* other than the *authorised fund manager* are responsible for the *authorised fund*.
- (3) The *FCA* is unlikely to approve a name of an *authorised fund* that includes the word "guaranteed" unless:
- (a) the guarantee is given by:
 - (i) an *authorised person*;
 - (ii) a *person* which is established in an *EEA State* and equivalent to an *authorised person*; or
 - (iii) a *person* subject to prudential supervision in accordance with criteria defined by *UK law* or prudential rules at least as stringent as those laid down by *UK law*;

other than the *authorised fund manager* or the *depository*.
 - (b) the *authorised fund manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
 - (c) the guarantee covers all *unitholders* within the *authorised fund* and is legally enforceable by each *Unitholder* who is intended to benefit from it or by a *person* acting on that *unitholder's* behalf;
 - (d) the guarantee relates to the total amount paid for a *unit* which includes any charge or other costs of buying or selling *units* in the *authorised fund*;
 - (e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and
 - (f) where the guarantee applies to different *classes* of *unit*, it is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes* of *unit*.
- (4) The name of an *authorised fund* may indicate a guaranteed capital return or income return or both but only if the total amount paid for a *unit* is guaranteed in accordance with (3).
- (5) The *FCA* is unlikely to approve a name of an *authorised fund* that includes words implying a degree of capital security (such as "capital protected" or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus*, and:
- (a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
 - (b) the investment objective and investment policy for the *authorised fund* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.

- (6) When determining whether (5) is complied with, the *FCA* will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

Undesirable or misleading names: umbrellas

- 6.9.7 **R** The *authorised fund manager* must ensure that the name of a *sub-fund* or of a *class of unit* is not undesirable or misleading.

Undesirable or misleading names: umbrellas - guidance

- 6.9.8 **G** When deciding whether **COLL 6.9.7R** is complied with, the *FCA* will take into account **COLL 6.9.6G**. **COLL 6.9.7R** applies generally and not just to the names that include the words "guaranteed" or "capital protected".

- 6.9.8A **R** [deleted]

Use of the term 'UCITS ETF'

- 6.9.8B **G**
- (1) *ESMA* has issued guidelines on the use of the term 'UCITS ETF'. A 'UCITS ETF' is a *UCITS* with at least one *unit* or share class which is traded throughout the *day*, on at least one *regulated market* or *multilateral trading facility*, with at least one *market maker* that takes action to ensure that the stock exchange value of its *units* or *shares* does not significantly vary from its net asset value and, where applicable, its indicative net asset value.
 - (2) A 'UCITS ETF' should use the identifier 'UCITS ETF' which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, *instrument of incorporation*, *prospectus*, *key investor information document* or marketing communications.
 - (3) A *UCITS* which is not a 'UCITS ETF' should not use the 'UCITS ETF' identifier, 'ETF' or 'exchange traded fund' in its name or in any of the documents or communications referred to in (2).

[Note: *ESMA's* Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)]

Use of the term 'long-term asset fund' or 'LTAF'

- 6.9.8C **R**
- (1) Paragraph (2) applies to the *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme*, an *ICVC* which is such a scheme, and any other *directors* of such an *ICVC*.
 - (2) The *scheme* or *sub-fund*:
 - (a) must not use 'Long-Term Asset Fund' or 'LTAF' in its name; and
 - (b) must not otherwise suggest through its name that it is a *fund* which invests in long-term assets or describe itself as such.

- 6.9.8D **G** (1) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for *long-term asset funds* (see ■ COLL 15).
- (2) [deleted]

ESG naming restrictions

- 6.9.8E **G** Further requirements related to the naming and marketing of *authorised funds* are found in ■ ESG 4.3.

Restrictions of business for UCITS management companies

- 6.9.9 **R** A *UCITS management company* must not engage in any activities other than:

- (1) [deleted]
- (1A) *managing a UK UCITS*;
- (1B) *managing an AIF*;
- (1C) *acting as a residual CIS operator*;
- (2) activities for the purposes of or in connection with those in (1A), (1B) or (1C);
- (3) collective portfolio management, including without limitation:
- (a) investment management;
 - (b) administration:
 - (i) legal and fund management accounting services;
 - (ii) *customer enquiries*;
 - (iii) valuation and pricing (including tax returns);
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of unitholder register;
 - (vi) distribution of income;
 - (vii) unit issues and *redemptions*;
 - (viii) contract settlements (including certificate dispatch); and
 - (ix) record keeping; and
 - (c) marketing;
- (4) *managing investments* where the relevant portfolio includes one or more *financial instruments*;
- (5) investment advice concerning *financial instruments* where the firm has permission for the activity in (4); and
- (6) safeguarding and administration of *collective investment scheme units* where the *firm* has a *permission* for the activity in (4).

Connected activities: guidance

6.9.10

G

- (1) Examples of the connected activities referred to in **COLL 6.9.9 R (2)** include management of *group plans*, as long as they are dedicated to *investments* in *unit trust schemes*, *co-ownership schemes*, *limited partnership schemes* and *OEICs* for which the *firm* acts as an *authorised fund manager*.
- (2) [deleted]

Notification to the FCA in its role as registrar of ICVCs

6.9.11

R

An *ICVC* must notify the *FCA* within 14 *days* of the occurrence of any of the following:

- (1) any amendment to the *instrument of incorporation*;
- (2) any change in the address of the head office of the *ICVC*;
- (3) any change of *director*;
- (4) any change of *depository*;
- (5) in respect of any *director* or *depository*, any change in the information mentioned in regulation 12(1)(b) or (c) of the *OEIC Regulations* (Applications for authorisation);
- (6) any change of the auditor of the *ICVC*;
- (7) any order in respect of the *ICVC* made by virtue of regulation 70 of the *OEIC Regulations* (Mergers and divisions).

6.10 Senior personnel responsibilities

Application

- 6.10.1 **R** (1) This section applies to an *authorised fund manager of a UCITS scheme*.
- (2) [deleted]

Senior personnel responsibilities

- 6.10.2 **R** In complying with **■ SYSC 4.3.1 R** (Responsibility of senior personnel), an *authorised fund manager of a UCITS scheme* must ensure that its *senior personnel*:
- (1) are responsible for the implementation of the general investment policy for each *scheme* it manages, as defined, where relevant, in the *prospectus* or the *instrument constituting the fund*;
 - (2) oversee the approval of investment strategies for each *scheme* it manages;
 - (3) are responsible for ensuring that the *authorised fund manager* has a permanent and effective compliance function as referred to in **■ SYSC 6.1** (Compliance), even if this function is performed by a third party;
 - (4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the *risk limit system* of each *scheme* it manages are properly and effectively implemented and complied with, even if the risk management function is performed by a third party;
 - (5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each *scheme* it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and
 - (6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in **■ COLL 6.12.5 R** (Risk management policy), including the *risk limit system* for each *scheme* it manages.

[Note: article 9(2) of the *UCITS implementing Directive*]

6.10.3

R

An authorised fund manager of a UCITS scheme must ensure that its senior personnel receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in ■ COLL 6.10.2R (2) to ■ COLL 6.10.2R (5).

[Note: article 9(5) of the UCITS implementing Directive]

6.11 Risk control and internal reporting

Application

- 6.11.1 **R** (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.
- (2) [deleted]

Permanent risk management function

- 6.11.2 **R** (1) An *authorised fund manager* of a *UCITS scheme* must establish and maintain a permanent risk management function.
- (2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the *authorised fund manager's* business and of each *scheme* it manages.
- (3) The *authorised fund manager* must be able to demonstrate that:
- (a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and
 - (b) its risk management process satisfies the requirements of **■ COLL 6.12.3 R** (Risk management process).

[Note: articles 12(1) and 12(2) of the *UCITS implementing Directive*]

- 6.11.3 **G** Where the risk management function required under **■ COLL 6.11.2 R** (1) is not hierarchically and functionally independent, the *authorised fund manager* should nevertheless be able to demonstrate that its risk management process satisfies the requirements of **■ COLL 6.12.3 R** (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[Note: article 12(2) third paragraph and recital (12) of the *UCITS implementing Directive*]

Duties of the permanent risk management function

- 6.11.4 **R** (1) The permanent risk management function must:
- (a) implement the risk management policy and procedures;
 - (b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as

required by ■ COLL 5.2 (General investment powers and limits for UCITS schemes) and ■ COLL 5.3 (Derivative exposure);

- (c) provide advice to the *governing body*, as regards the identification of the risk profile of each *scheme* it manages;
 - (d) provide regular reports to the *governing body* and, where it exists, the *supervisory function* on:
 - (i) the consistency between the current level of risk incurred by each *scheme* it manages and the risk profile agreed for that *scheme*;
 - (ii) the compliance of each *scheme* it manages with the *risk limit system* referred to in (b); and
 - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
 - (e) provide regular reports to the *senior personnel* outlining the current level of risk incurred by the relevant *scheme* and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and
 - (f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in ■ COLL 5.2.23 R (OTC transactions in derivatives), ■ COLL 5.2.23C R (Valuation of OTC derivatives) and in this *rule*.
- (2) The permanent risk management function must have the authority and access to all relevant information necessary to fulfil the duties set out in (1).

[Note: articles 12(3), 12(4) and 44(3) of the *UCITS implementing Directive*]



6.12 Risk management policy and risk measurement

Application

6.12.1 **R** This section applies to an *authorised fund manager* and a *depository* of a *UCITS scheme*.

6.12.2 **G** [deleted]

Risk management process

6.12.3 **R**

- (1) (a) An *authorised fund manager* of a *UCITS scheme* must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.
- (b) In particular, an *authorised fund manager* of a *UCITS scheme* must not solely or mechanically rely on credit ratings issued by credit rating agencies, as defined in article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, or credit rating agencies as defined in the *CRA Regulation*, for assessing the creditworthiness of the *scheme's* assets.

(2) An *authorised fund manager* must regularly notify the following information to the *FCA* and at least on an annual basis:

- (a) a true and fair view of the types of *derivatives* and forward transactions to be used within the *scheme* together with their underlying risks and any relevant quantitative limits; and
- (b) the methods for estimating risks in *derivative* and forward transactions.

[**Note:** article 51(1), first and third paragraphs, of the *UCITS Directive* and article 45(1) of the *UCITS implementing Directive*]

6.12.3A **R** An *authorised fund manager* subject to **COLL 6.12.3R(2)** must notify the *FCA* of the information specified in points (a) and (b) of that *rule*:

- (1) annually, within 30 *business days* of 31 October, with information that is accurate as of 31 October of that year;
- (2) using the form in **COLL 6 Annex 2R**; and

6.12.3B

G

- (3) by submitting it:
 - (a) online through the appropriate systems accessible from the *FCA's* website; or
 - (b) if the appropriate systems are unavailable, via email to fundsupervision@fca.org.uk.
- (1) In addition, an *authorised fund manager* subject to ■ COLL 6.12.3R(2) should submit a notification to the *FCA* if there has been a significant change to the *fund's* risk profile since its last report, by sending the form in ■ COLL 6 Annex 2R, completed as applicable, to fundsupervision@fca.org.uk.
- (2) A significant change to the *fund's* risk profile could include, but is not limited to:
 - (a) the first use of *derivatives* for investment purposes, if *derivatives* have previously been used only for *efficient portfolio management*;
 - (b) investment in non-standard *derivatives*, if only standard *derivatives* have been used previously;
 - (c) a change in the type of risk measure used to calculate global exposure (commitment method, relative *VaR* or absolute *VaR*); and
 - (d) where a *VaR* measure is used, a change in the parameters of the calculation.
- (3) Reports of significant changes only need to contain new information for the period since the previous report.

6.12.4

G

- (1) The risk management process in ■ COLL 6.12.3 R should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
- (2) The *depository* of a *UCITS scheme* should take reasonable care to review the appropriateness of the risk management process in line with its duties under ■ COLL 6.6.4 R (General duties of the depository) and ■ COLL 6.6.14 R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by ■ SYSC 4.1 (General requirements).
- (5) The risk management process should enable the analysis required by ■ COLL 6.12.3 R to be undertaken at least daily or at each *valuation point*, whichever is more frequent.

- (6) An *authorised fund manager* should undertake the risk assessment required by ■ COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the *derivative* transaction is an *associate* of the *authorised fund manager* the *UK UCITS management company* or the credit issuer.

[Note: CESR's UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

Risk management policy

6.12.5

R

- (1) An *authorised fund manager* of a *UCITS scheme* must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that *scheme* is or might be exposed.
- (2) The risk management policy must comprise such procedures as are necessary to enable the *authorised fund manager* to assess the exposure of each *UCITS* it manages to *market risk*, *liquidity risk* and *counterparty risk*, and to all other risks, including *operational risk*, that might be material for that scheme.
- (3) The risk management policy must address at least the following elements:
 - (a) the techniques, tools and arrangements that enable the *authorised fund manager* to comply with the obligations set out in this section and ■ COLL 5.3 (Derivative exposure);
 - (b) the allocation of responsibilities within the *authorised fund manager* pertaining to risk management; and
 - (c) the terms, contents and frequency of reporting of the risk management function referred to in ■ COLL 6.11.2 R (Permanent risk management function) to the *governing body*, *senior personnel* and, where appropriate, to the *supervisory function*.
- (4) To meet its obligations in (1), (2) and (3) an *authorised fund manager* must take into account the nature, scale and complexity of its business and of the *UCITS* it manages.

[Note: article 38 of the UCITS implementing Directive]

6.12.6

G

[deleted]

Monitoring of risk management policy

6.12.7

R

- (1) An *authorised fund manager* of a *UCITS scheme* must assess, monitor and periodically review:
 - (a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in ■ COLL 6.12.5 R;
 - (b) the level of compliance by the *authorised fund manager* with the risk management policy and with those arrangements, processes and techniques referred to in ■ COLL 6.12.5 R; and

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

(2) The *authorised fund manager* must notify the *FCA* of any material changes to the risk management process.

[Note: article 39(1) and 39(2) of the *UCITS implementing Directive*]

6.12.8

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Authorised fund managers are advised that when they applied for *authorisation* from the *FCA* under the *Act*, their ability to comply with the requirements in ■ COLL 6.12.7 R would have been assessed by the *FCA* as an aspect of their fitness and properness in determining whether the *threshold conditions* set out in Schedule 6 (Threshold conditions) of the *Act* were met. *Firms* are further advised that their compliance with these requirements is subject to review by the *FCA* on an ongoing basis in determining whether they continue to meet the *threshold conditions*.

[Note: article 39(3) of the *UCITS implementing Directive*]

Measurement and management of risk

6.12.9

R

- (1) An *authorised fund manager* of a *UCITS scheme* must adopt adequate and effective arrangements, processes and techniques in order to:
 - (a) measure and manage at any time the risks to which that *UCITS* is or might be exposed; and
 - (b) ensure compliance with limits concerning global exposure and *counterparty risk*, in accordance with ■ COLL 5.2.11B R (Counterparty risk and issuer concentration) and ■ COLL 5.3 (Derivative exposure).
- (2) For the purposes of (1), the *authorised fund manager* must take the following actions for each *UCITS* it manages:
 - (a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
 - (b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
 - (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the *UCITS*;
 - (d) establish, implement and maintain a *risk limit system* for each *UCITS*;
 - (e) ensure that the current level of risk complies with that *risk limit system*; and
 - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that *risk limit system*, result in timely remedial actions in the best interests of *unitholders*.

(3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* and the *UCITS* it manages and be consistent with the *UCITS'* risk profile.

[Note: articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10 **G** [deleted]

6.12.11 **R** (1) An *authorised fund manager* must employ an appropriate *liquidity risk* management process in order to ensure that each *UCITS* it manages is able to comply at any time with **COLL 6.2.16 R** (Sale and redemption).

(2) Where appropriate, the *authorised fund manager* must conduct stress tests to enable it to assess the *liquidity risk* of the *UCITS* under exceptional circumstances.

[Note: article 40(3) of the *UCITS implementing Directive*]

6.12.12 **R** An *authorised fund manager* must ensure that, for each *UCITS* it manages, the liquidity profile of the investments of the *scheme* is appropriate to the *redemption* policy laid down in the *instrument constituting the fund* or the *prospectus*.

[Note: article 40(4) of the *UCITS implementing Directive*]

CESR guidelines: Risk management principles for UCITS

6.12.13 **G** *Authorised fund managers* are advised that CESR issued guidelines prior to the revision of the *UCITS Directive* in 2009 which, to the extent they remain compatible with the *rules* and other *guidance* in *COLL*, should be complied with in applying the *rules* in this section. These guidelines are available at:

Guidelines - Risk management principles for UCITS (CESR/09-178)

https://www.esma.europa.eu/sites/default/files/library/2015/11/09_178.pdf



6.13 Record keeping

Application

6.13.1

R

- (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.
- (2) [deleted]

Recording of portfolio transactions

6.13.2

R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure, for each portfolio transaction relating to a *scheme* it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.
- (2) The record referred to in (1) must include:
 - (a) the name or other designation of the *scheme* and of the *person* acting on behalf of the *scheme*;
 - (b) the details necessary to identify the instrument in question;
 - (c) the quantity;
 - (d) the type of the order or transaction;
 - (e) the price;
 - (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the *person* to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;
 - (g) the name of the *person* transmitting the order or executing the transaction;
 - (h) where applicable, the reasons for the revocation of an order; and
 - (i) for executed transactions, the counterparty and *execution venue* identification.

[Note: article 14 of the *UCITS implementing Directive*]

Recording of subscription and redemption orders

6.13.3

R

- (1) An *authorised fund manager* of a *UCITS scheme* must take all reasonable steps to ensure that every subscription and *redemption* order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of that order.

- (2) The record referred to in (1) must include information on the following:
 - (a) the relevant *scheme*;
 - (b) the *person* giving or transmitting the order;
 - (c) the *person* receiving the order;
 - (d) the date and time of the order;
 - (e) the terms and means of payment;
 - (f) the type of the order;
 - (g) the date of execution of the order;
 - (h) the number of *units* subscribed or redeemed;
 - (i) the subscription or *redemption* price for each *unit*;
 - (j) the total subscription or *redemption* value of the *units*; and
 - (k) the gross value of the order including charges for subscription or net amount after charges for *redemption*.

[Note: article 15 of the *UCITS implementing Directive*]

Recordkeeping requirements

6.13.4

R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure the retention of the records referred to in ■ COLL 6.13.2 R and ■ COLL 6.13.3 R for a period of at least five years or, in exceptional circumstances and where directed by the *FCA*, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the *FCA* to exercise its supervisory functions in respect of *UCITS schemes*.
- (2) Following the termination of its authorisation, an *authorised fund manager* of a *UCITS scheme* must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the *UCITS* to another *authorised fund manager*, arrange for those records for the past five years to be accessible to that other manager.
- (3) The *authorised fund manager* must retain the records referred to in ■ COLL 6.13.2 R and ■ COLL 6.13.3 R in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that the following conditions are met:
 - (a) the *FCA* must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
 - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and
 - (c) it must not be possible for the records to be otherwise manipulated or altered.

[Note: article 16 of the *UCITS implementing Directive*]

Electronic data processing.....

6.13.5 **R** An authorised fund manager of a UCITS scheme must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order, in order to be able to comply with **COLL 6.13.2 R** (Recording of portfolio transactions) and **COLL 6.13.3 R** (Recording of subscription and redemption orders).

[Note: article 7(1) of the UCITS implementing Directive]

6.13.6 **R** An authorised fund manager of a UCITS scheme must ensure a high level of security during the electronic data processing referred to in **COLL 6.13.5 R** as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the UCITS implementing Directive]

UK UCITS management company of UCITS schemes: Derivative Use Report (FSA042: UCITS)

COLL 6 Annex 2RCOLL 6 Annex 2R

Guidance notes on UK UCITS management company of UCITS schemes: Derivative Use Report (FSA042: UCITS)

Description	Guidance
Fund name	This is the name of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> as it appears on the FS Register.
PRN or LEI	For a <i>UCITS scheme</i> , this is the product reference number of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> which appears on the FS Register.
Derivative	A <i>forward</i> , a <i>future</i> , an <i>option</i> , a <i>swap</i> , a <i>warrant</i> or another type of <i>derivative</i> instrument.
Derivatives used for investment purposes	This means that <i>derivatives</i> are not being used solely in pursuit of <i>efficient portfolio management</i> .
Global exposure	Global exposure is calculated as either the incremental exposure and leverage generated through the use of <i>derivatives</i> , or the <i>market risk</i> of the <i>scheme property</i> , as set out in COLL 5.3.7R. <i>Market risk</i> is calculated using one of the stated risk measures.
Risk measures	For each <i>scheme</i> or, where applicable, <i>sub-fund</i> , information should be provided for only one of the risk measures (commitment approach, relative <i>VaR</i> or absolute <i>VaR</i>) indicated in the table.
Average leverage	In line with the CESR Guidelines (CESR/10-788), this is the mean of all leverage calculations over the past twelve <i>months</i> , leverage being calculated as the sum of the notional of the <i>derivatives</i> used.
Leverage limit	In line with Box 24 of the CESR guidelines (CESR/10-788), the usually expected or maximum expected level of leverage should be provided. Where these are not applicable, please provide the maximum leverage limit approved internally by the <i>authorised fund manager</i> (or leave blank if appropriate and provide an explanation in the comments box).

Chapter 7

Suspension of dealings, termination of authorised funds and side pockets

7.1 Introduction

Application

7.1.1

R

(1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of an *ICVC*, a *depository* of an *ICVC*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* of an *AUT* or *ACS*, where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme* in accordance with ■ COLL 7.1.2 R (Table of application).

(2) ■ COLL 7.7 (UCITS mergers) applies only to a *domestic UCITS merger*.

Table of application

7.1.2

R

This table belongs to ■ COLL 7.1.1 R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Deposit-ary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Deposit-ary of an AUT or ACS</i>
7.1.1	x	x	x	x	x	x
7.1.3	x	x	x	x	x	x
7.2.-3*		x		x	x	x
7.2.-2*		x		x	x	x
7.2.-1*		x		x	x	x

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
7.2.1	x	x		x	x	x
7.3.1	x	x	x	x		
7.3.2	x	x	x	x		
7.3.3	x	x	x			
7.3.4	x	x	x			
7.3.5		x	x			
7.3.6	x	x	x			
7.3.7	x	x	x	x		
7.3.8		x	x			
7.3.9		x				
7.3.10	x	x	x	x		
7.3.11		x				
7.3.12	x	x				
7.3.13 (1)		x	x			
7.3.13 (2)			x	x		
7.4*					x	x
7.4A*					x	x
7.5		x	x	x	x	x
7.6		x	x	x	x	x
7.7	x	x	x	x	x	x
7.8	x	x	x	x	x	x
Notes:	(1)	"x" means "applies", but not every paragraph in every <i>rule</i> will necessarily apply.				
	(2)	*COLL 7.4 does not apply to the <i>authorised contractual scheme manager</i> or <i>depositary</i> of an <i>ACS</i> .				
	(3)	*COLL 7.4A does not apply to the <i>manager</i> or <i>depositary</i> of an <i>AUT</i> .				
	(4)	COLL 7.2.-3R to 7.2.-1R apply only to the <i>authorised fund manager</i> and <i>depositary</i> of a <i>non-UCITS retail scheme</i> .				
	(5)	COLL 7.8 (Side pockets) applies only to <i>UCITS schemes</i> and <i>non-UCITS retail schemes</i> in which the <i>authorised fund manager</i> intends to establish (or has established) a <i>side pocket class</i> . The <i>rules</i> in COLL 7.8 do not apply to a <i>regulated money market fund</i> .				

Purpose

7.1.3



(1) This chapter helps to achieve the *statutory objective* of protecting investors by ensuring the *authorised fund manager* does not sell or *redeem units* at a *price* that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to

value, or to dispose of and obtain payment for, all or some of the *scheme property* of an *authorised fund* or *sub-fund*. ■ COLL 7.2.-3R, ■ COLL 7.2.-2R, ■ COLL 7.2.-1R, and ■ COLL 7.2.1 R set out the circumstances in which an *authorised fund manager* must or may suspend *dealings* in *units* and the manner in which a suspension takes effect.

- (2) This chapter also helps with the *statutory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs*, *AUTs* and *co-ownership schemes*. ■ EG 14(Collective investment schemes) deals with the *FCA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.
- (3) This chapter also helps to achieve the *statutory objectives* of protecting *consumers* and protecting and enhancing the integrity of the *UK* financial system, by enabling *unitholders* or potential *unitholders* in a *UCITS scheme* or *non-UCITS retail scheme* with *affected investments* to continue to *deal* in *units* representing assets held in the *scheme property* that are not *affected investments*.

7.2 Suspension and restart of dealings

Requirement

7.2.-3

R

- (1) This *rule* applies to the *authorised fund manager* of a *non-UCITS retail scheme* if at any time:
 - (a) a *standing independent valuer* has expressed material uncertainty in accordance with VPS 3 paragraph 2.2(o) and the guidance at VPGA10, RICS Valuation Global Standards 2017 (The Red Book) (effective from 1 July 2017), about the value of one or more immovables under management and that material uncertainty applies to at least 20% of the value of the *scheme property*; or
 - (b) the *authorised fund* invests at least 20% of the value of the *scheme property* in *units* of one or more other *authorised funds* for which *dealings in units* have been temporarily suspended under (2).
- (2) As soon as possible and in any event by the end of the second *business day* after the day on which this *rule* starts to apply under (1), the *authorised fund manager* must temporarily suspend *dealings in units* in the *authorised fund* unless (3) applies.
- (3) *Dealings in units* in the *authorised fund* may continue provided that:
 - (a) as soon as possible and in any event by the end of the second *business day* after the day on which this *rule* starts to apply under (1), the *authorised fund manager* and the *depository* agree that *dealings in units* in the *authorised fund* should continue;
 - (b) the *authorised fund manager* and the *depository* have a reasonable basis for determining that a temporary suspension of *dealings in units* would not be in the best interests of *unitholders* in the *authorised fund*; and
 - (c) the *authorised fund manager* and the *depository* do not rely solely on a fair value price adjustment when making their determination under (b).

7.2.-2

R

- (1) This *rule* applies where the *authorised fund manager* of a *non-UCITS retail scheme* is required to temporarily suspend *dealings in units* in the *authorised fund* under ■ COLL 7.2.-3R(2) or ■ COLL 7.2.-1R(3).
- (2) The *authorised fund manager* must notify the *depository* before suspending *dealings in units* in the *authorised fund*.
- (3) During the suspension, the *authorised fund manager* must follow the requirements set out in the following provisions, where applicable:

- (a) ■ COLL 7.2.1R(2);
- (b) ■ COLL 7.2.1R(2A);
- (c) ■ COLL 7.2.1R(2B);
- (d) ■ COLL 7.2.1R(2C);
- (e) ■ COLL 7.2.1R(3);
- (f) ■ COLL 7.2.1R(4A);
- (g) ■ COLL 7.2.1R(5); and
- (h) ■ COLL 7.2.1R(6).

(4) *Dealings in units* must restart as soon as reasonably practicable after:

- (a) the *standing independent valuer's* material uncertainty assessment applies to less than 20% of the value of the *scheme property*; and
- (b) the *scheme's depositary* gives its approval for the temporary suspension to be removed.

(5) If a *non-UCITS retail scheme* operates *limited redemption arrangements* and a suspension has prevented *dealings in units* at a *valuation point*, the *authorised fund manager* must declare an additional *valuation point* as soon as possible after the restart of *dealings in units*.

(6) This *rule* applies to a *sub-fund* as it applies to an *authorised fund*, and:

- (a) references to the *units* of the *class* or *classes* relate to that *sub-fund* and to the *scheme property* attributable to the *sub-fund*; and
- (b) this *rule* can only apply to one or more *classes* of *units* without being applied to other *classes* if the *authorised fund manager* considers that a suspension of *dealings in units* of some but not all *classes* of *units* is in the best interest of all the *unitholders* of that *authorised fund* or *sub-fund*.

7.2.-1

R

- (1) This *rule* applies where the *authorised fund manager* and the *depositary* agree that *dealings in units* in the *authorised fund* should continue under ■ COLL 7.2.-3R(3) and, if relevant, following a review under this *rule*.
- (2) During the period of material uncertainty (see (8) below), the *authorised fund manager* and the *depositary* must review their agreement not to suspend *dealings in units* in the *authorised fund* at least every 14 days.
- (3) Following such a review the *authorised fund manager* must temporarily suspend *dealings in units* in the *authorised fund* unless (4) applies.
- (4) *Dealings in units* in the *authorised fund* may continue provided that:
 - (a) the *authorised fund manager* and the *depositary* agree that *dealings in units* in the *authorised fund* should continue;

7.2.1

R

- (b) the *authorised fund manager* and the *depository* have a reasonable basis for determining that a temporary suspension of *dealings* in *units* would not be in the best interests of *unitholders* in the *authorised fund*; and
 - (c) the *authorised fund manager* and the *depository* do not rely solely on a fair value price adjustment when making their determination under (b).
- (6) The *authorised fund manager* must inform the *FCA* of the results of each review.
- (7) This *rule* applies to a *sub-fund* as it applies to an *authorised fund*, and:
 - (a) references to the *units* of the *class* or *classes* relate to that *sub-fund* and to the *scheme property* attributable to the *sub-fund*; and
 - (b) this *rule* can only apply to one or more *classes* of *units* without being applied to other *classes* if the *authorised fund manager* considers a suspension of *dealings* in *units* of some but not all *classes* of *units* is in the best interest of all the *unitholders* of that *authorised fund* or *sub-fund*.
- (8) In this *rule*, a “period of material uncertainty” is any period during which one or both of ■ COLL 7.2.-3R(1)(a) and (b) applies.
- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, temporarily suspend the *issue*, *cancellation*, *sale* and *redemption* of *units* in an *authorised fund* (referred to in this chapter as “*dealings* in *units*”), where due to exceptional circumstances it is in the interest of all the *unitholders* in the *authorised fund*. Where an *authorised fund* is a *regulated money market fund*, the *authorised fund manager* must ensure that any such suspensions are consistent with the *Money Market Funds Regulation*.
- (1A) The *authorised fund manager* and the *depository* must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the *unitholders*.
- (2) On suspension, the *authorised fund manager*, or the *depository* if it has required the *authorised fund manager* to suspend *dealings* in *units*, must:
 - (a) immediately inform the *FCA*, stating the reason for its action; and
 - (b) as soon as practicable give written confirmation of the suspension and the reasons for it to the *FCA*.
- (2A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.
- (2B) In making the notification set out in (2A), the *authorised fund manager* must ensure that it:
 - (a) draws *unitholders'* particular attention to the exceptional circumstance which resulted in the suspension;

- (b) is clear, fair and not misleading; and
 - (c) informs *unitholders* how to obtain the information detailed in (2C).
- (2C) The *authorised fund manager* must ensure that it publishes (on its website or by other general means) sufficient details to keep *unitholders* appropriately informed about the suspension including, if known, its likely duration.
- (3) During a suspension:
- (a) none of the obligations in ■ COLL 6.2 (Dealing) apply; and
 - (b) the *authorised fund manager* must comply with as much of ■ COLL 6.3 (Valuation and pricing) as is practicable in the light of the suspension.
- (4) The suspension of *dealings* in *units* must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased.
- (4A) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FCA* of the results of this review and any change to the information provided in (2).
- (5) The *authorised fund manager* must inform the *FCA* of the proposed restart of *dealings* in *units* and immediately after the restart must confirm this by giving notice to the *FCA*.
- (6) The *authorised fund manager* may agree, during the suspension, to *deal* in *units* in which case all *deals* accepted during, and outstanding prior to, the suspension will be undertaken at a *price* calculated at the first *valuation point* after restart of *dealing* in *units*, subject to (8).
- (7) This *rule* applies to a *sub-fund* as it applies to an *authorised fund*, and:
- (a) references to the *units* of the *class* or *classes* relate to that *sub-fund* and to the *scheme property* attributable to the *sub-fund*; and
 - (b) this *rule* can only apply to one or more *classes* of *units* without being applied to other *classes*, if it is in the interest of all the *unitholders*.
- (8) If an *authorised fund* operates *limited redemption arrangements*, and the event in (1) has affected a *valuation point*, the *authorised fund manager* must declare an additional *valuation point* as soon as possible after the restart of *dealings* in *units*.

[Note: article 45(2) of the *UCITS Directive*]

Temporary suspension of units of a master UCITS or qualifying master scheme

7.2.1A

R

Where:

- (1) an *authorised fund manager* of a *UCITS scheme* which is a *master UCITS* or a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale and redemption* of its *units*, whether at its own initiative or at the request of the *FCA*; or
- (2) an *operator* of an *EEA UCITS scheme* which is a *master UCITS* or a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale or redemption* of its *units*, whether at its own initiative or at the request of its *Home State regulator*; or
- (3) an *authorised fund manager* of a *non-UCITS retail scheme* which is a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale or redemption* of its *units*, whether at its own initiative or at the request of the *FCA*; or
- (4) the *operator* of a *recognised scheme* which is a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale or redemption* of its *units* whether at its own initiative or at the request of its regulator;

the *authorised fund manager* of each of its *feeder UCITS* (which is a *UCITS scheme*) or *feeder NURS* is entitled to suspend the *issue, cancellation, sale or redemption* of its *units* for the same period of time as the *master UCITS* or *qualifying master scheme*.

[Note: article 60(3) of the *UCITS Directive*]

Guidance

7.2.2

G

- (-1) The *guidance* in (1), (1A) and (1B) does not apply in circumstances where an *authorised fund manager* is required to temporarily suspend *dealings in units* in an *authorised fund* under ■ COLL 7.2.-3R or ■ COLL 7.2.-1R.
- (1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the *unitholders*.
- (1A) Except in the case of *FIIAs* (for which see (1B) below), difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the *authorised fund manager* and *depository* would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the *unitholders*. Before an *authorised fund manager* and *depository* determine that it is in the best interests of *unitholders* to suspend *dealing*, they should ensure that any alternative courses of action have been discounted.
- (1B) In the case of *FIIAs*, there may be circumstances where suspension is genuinely in the best interests of *unitholders*; for example, where orders received for *redemptions* of *units* at the next valuation period cannot be executed without significantly depleting the *scheme's*

liquidity, and/or without selling *scheme property* at a substantial discount to its open market value.

- (2) The *authorised fund manager* will need to ensure that any suspension, while maintaining *unitholders'* interests, is temporary, of minimal duration and is consistent with the provisions of the *prospectus* and the *instrument constituting the fund*.
- (3) During a suspension, the *authorised fund manager* should inform any *person* who requests a *sale or redemption of units* that all *dealings* in *units* have been suspended and that that *person* has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.



7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1

G

- (1) The winding up of an *ICVC* may be carried out under this section instead of by the court provided the *ICVC* is solvent and the steps required under regulation 21 the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the *ACD* and any other *directors* of the *ICVC*.
- (2) The termination of a *sub-fund* may be carried out under this section, instead of by the court, provided the *sub-fund* is solvent and the steps required under regulation 21 of the *OEIC Regulations* are complied with. Termination can only commence once the proposed alterations to the *ICVC's instrument of incorporation and prospectus* have been notified to the *FCA* and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) A *sub-fund* or *ICVC* may also be terminated or wound up in connection with a *scheme of arrangement*. *unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (4) ■ COLL 7.3.3 G gives an overview of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

7.3.2

R

Special meanings for termination of a sub-fund of an ICVC

- In this section, where a *sub-fund* of an *ICVC* is being terminated, references to:
- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
 - (2) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
 - (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

(4) liabilities, are references to liabilities of the *ICVC* allocated or attributable to the *sub-fund* to be terminated.

Guidance on winding up or termination

7.3.3

G

This table belongs to ■ COLL 7.3.1 G (4) (Explanation of COLL 7.3)

Summary of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FCA rules*, assuming *FCA approval*.

Notes: N = Notice to be given to the *FCA* under regulation 21 of *OEIC Regulations*

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.3.8 R(4))

Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 days	7.3.5 (2)
2	Send audited solvency statement to the <i>FCA</i> with copy to <i>depository</i>	By N + 21 days	7.3.5 (4) and (5)
3	Receive the <i>FCA</i> approval	N + one month	Regulation 21 of <i>OEIC Regulations</i>
4	Normal business ceases; notify <i>unitholders</i>	E	7.3.6
5	Realise proceeds, wind up, instruct <i>depository</i> accordingly	ASAP after E	7.3.7
6	Prepare final account or termination account & have account audited	On completion of W/U or termination	7.3.8
7	Send final account or termination account and auditor's report to the <i>FCA</i> & <i>unitholders</i>	Within 4 months of FAP	7.3.8(6)
8	Request <i>FCA</i> to revoke relevant <i>authorisation order</i> or update its records	On completion of W/U or termination	7.3.7(9)

**When an ICVC is to be wound up or a sub-fund terminated or
wound up**

7.3.4

R

- (1) An *ICVC* must not be wound up except:
 - (a) under this section; or
 - (b) as an unregistered company under Part V of the Insolvency Act 1986.

- (1A) A *sub-fund* must not:
 - (a) be terminated except under this section; or
 - (b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the *OEIC Regulations*) as an unregistered company.

- (2) An *ICVC* must not be wound up or a *sub-fund* terminated under this section if there is a vacancy in the position of *ACD*.

- (3) An *ICVC* must not be wound up or a *sub-fund* terminated under this section:
 - (a) unless and until effect may be given, under regulation 21 of the *OEIC Regulations*, to proposals to wind up the affairs of the *ICVC* or to proposals to make the alterations to the *ICVC's instrument of incorporation* and *prospectus* that will be required if a *sub-fund* is terminated;
 - (b) unless a statement has been prepared and sent or delivered to the *FCA* under ■ COLL 7.3.5 R (Solvency statement) and received by the *FCA* prior to satisfaction of the condition in (a); and
 - (c) where a *person* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022 in respect of an *eligible CIS amount* relating to the *authorised fund* or *sub-fund*, the *ACD* and the *depository* have ensured that any records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6) (Maintenance of records) are:
 - (i) accessible by the *ACD* or the *depository* and will be preserved; or
 - (ii) transferred to a *dormant asset fund operator* or to another *authorised person* that has undertaken to preserve them.

- (4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an *ICVC* or terminate a *sub-fund* under this section must be taken:
 - (a) if an *extraordinary resolution* to that effect is passed; or
 - (b) when the period (if any) fixed for the duration of the *ICVC* or the *sub-fund* by the *instrument of incorporation* expires or any event occurs, for which the *instrument of incorporation* provides that the *ICVC* or the *sub-fund* is to be wound up or terminated; or
 - (c) on the date stated in any agreement by the *FCA* in response to a request from the *directors* for the winding up of the *ICVC* or a request for the termination of the *sub-fund*; or
 - (d) on the effective date of a duly approved *scheme of arrangement* which is to result in the *ICVC* ceasing to hold any *scheme property*; or

- (e) in the case of a *sub-fund*, on the effective date of a duly approved *scheme of arrangement* which is to result in the *sub-fund* ceasing to hold any *scheme property*; or
- (f) in the case of an *ICVC* that is an *umbrella*, on the date on which all of its *sub-funds* fall within (e) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *ICVC* may have assets and liabilities that are not attributable to any particular *sub-fund*.

Solvency statement

7.3.5

R

- (1) Before notice is given to the *FCA* under regulation 21 of the *OEIC Regulations* of the proposals referred to in ■ COLL 7.3.4 R (3), the *directors* must make a full enquiry into the *ICVC's* or, in the case of termination of a *sub-fund*, the *sub-fund's* affairs, business and property to determine whether the *ICVC* or the *sub-fund* will be able to meet all its liabilities.
- (2) The *ACD* must then, based on the results of this enquiry, prepare a statement either:
 - (a) confirming that the *ICVC* or the *sub-fund* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
 - (b) stating that such confirmation cannot be given.
- (3) This solvency statement must:
 - (a) relate to the *ICVC's* or the *sub-fund's* affairs, business and property at a date no more than 28 *days* before the date on which notice is given to the *FCA*;
 - (b) if there is more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD*; and
 - (c) if it contains the confirmation under (2)(a), be signed by at least one other *director* or, if there is no *director* other than the *ACD*, be signed by the *ACD*.
- (4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the *OEIC Regulations* (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.
- (5) The solvency statement must be sent or delivered to the *FCA* and the *depository* no later than 21 *days* after notice is given to the *FCA* in accordance with regulation 21 of the *OEIC Regulations*.

Consequences of commencement of winding up or termination

7.3.6

R

- (1) Winding up or termination must commence once the conditions referred to in ■ COLL 7.3.4 R (3) are both satisfied or, if later, once the events in ■ COLL 7.3.4 R (4) have occurred.
- (2) Once winding up or termination has commenced:

- (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing), ■ COLL 6.6.20R to ■ COLL 6.6.24G (Assessment of value) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *ICVC* or to the *units* and *scheme property* in the case of a *sub-fund*;
 - (b) the *ICVC* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.3.7 R (5);
 - (c) the *ACD* must cease to *sell* or *redeem units* or to arrange for the *issue* or *cancellation* of units, except in respect of the final *cancellation* under ■ COLL 7.3.7 R (5);
 - (d) no transfer of a *unit* may be registered and no other change to the *register* of *unitholders* may be made without the sanction of the *directors*;
 - (e) where winding up an *ICVC*, the *ICVC* must cease to carry on its business, except for its beneficial winding up; and
 - (f) the corporate status and corporate powers of the *ICVC* and (subject to the preceding provisions of this *rule*) the powers of the *directors* continue until the *ICVC* is dissolved.
- (3) If the *ACD* has not previously notified *unitholders* of the proposal to wind up the *ICVC* or terminate the *sub-fund*, the *ACD* must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the *unitholders*.

Manner of winding up or termination

7.3.7

R

- (1) [deleted]
- (2) The *ACD* must, as soon as practicable after winding up or termination has commenced, cause the *scheme property* to be realised and the liabilities of the *ICVC* or the *sub-fund* to be met out of the proceeds.
- (3) The *ACD* must instruct the *depository* how such proceeds (until utilised to meet liabilities or make distributions to *unitholders*) must be held and those instructions must be prepared with a view to the prudent protection of creditors and *unitholders* against loss.
- (4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the *ICVC's* or the *sub-fund's* remaining liabilities, the *ACD* may arrange for the *depository* to make one or more interim distributions to the *unitholders* proportionately to the right of their respective *units* to participate in *scheme property* at the commencement of the winding up or termination.
- (5) On or before the date on which the final account is sent to *unitholders* in accordance with ■ COLL 7.3.8 R (Final account and termination account), the *ACD* must arrange for all *units* in issue to be *cancelled* and for the *depository* to make a final distribution to the *unitholders*, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the *ICVC* or *sub-fund*).

- (6) Paragraphs (2) to (5) are subject to the terms of any *scheme of arrangement* sanctioned by an *extraordinary resolution* passed on or before the commencement of the winding up or termination.
- (7) Where the *ICVC* and one or more *unitholders* (other than the *ACD*) agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the *scheme property* which is proportionate to the right to participate in *scheme property* of that or those *unitholders*
- (8) In the case of (7), the *ACD* must cause the *ICVC* to distribute that part of the *scheme property* in specie to that or those *unitholders* in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the *ACD* appropriate to ensure that those *unitholders* bear the proportion of the liabilities and the expenses of the distribution attributable to their *units*.
- (9) The *depository* must notify the *FCA* once the winding up of the *ICVC* or the termination of a *sub-fund* (including compliance with ■ COLL 7.3.8 R is complete and at the same time the *ACD* or the *depository* must request the *FCA* to revoke the relevant *authorisation order* (on the winding up of an *ICVC*) or to update its records (on the termination of a *sub-fund* of an *ICVC*).
- (10) Where any sum of *money* stands to the account of the *ICVC* at the date of its dissolution or a *sub-fund* at the date of its termination, the *ACD* must arrange for the *depository* to pay or lodge that sum within one *month* after that date in accordance with regulation 33(4), (5) or (6) of the *OEIC Regulations* (Dissolution in other circumstances), where relevant, as applied by regulation 33C of the *OEIC Regulations* (Winding up of sub-funds).
- (11) [deleted]
- (12) [deleted]
- (13) [deleted]
- (14) [deleted]
- (15) [deleted]

7.3.7A

G

For the purposes of this section an *ICVC* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *ACD*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with ■ COLL 7.3.7 R (8); and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Transfers of orphan monies to a dormant asset fund operator

7.3.7B

G

- (1) Under regulation 33 of the *OEIC Regulations*, where an *ICVC* is dissolved otherwise than by the court, any sum of *money* (including unclaimed distributions) standing to the account of the *ICVC* at the date of the dissolution must be paid into court. This duty does not apply if (or to the extent that) it is transferred to a *dormant asset fund operator* as *orphan monies*.
- (2) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding *money* that is attributable pro rata to a 'gone-away' *person* (see section 10 of the Dormant Assets Act 2022) can be transferred as a *dormant asset*. However, a *person* with whom the *ACD* or the *depository* is still in contact could be invited to donate de minimis amounts as *unwanted asset money* for transfer to the *dormant asset fund operator* (see ■ COLL 6.8.4AR (Unwanted asset money)).
- (3) Where a transfer of *orphan monies* to a *dormant asset fund operator* is possible in accordance with the *instrument constituting the fund*, the *prospectus* and sections 8 and 9 of the Dormant Assets Act 2022, the *FCA* would expect this to be the preferred option for the *ICVC*.

Final account and termination account

7.3.8

R

- (1) Once the *ICVC's* affairs are wound up or termination of the *sub-fund* has been completed (including distribution or provision for distribution in accordance with ■ COLL 7.3.7 R (5)), the *ACD* must prepare an account of the winding up or termination showing:
 - (a) how it has been conducted; and
 - (b) how the *scheme property* has been disposed of.
- (2) The account in (1) must be, if there is:
 - (a) more than one *director*, approved by the board of *directors* and be signed on their behalf by the *ACD* and at least one other *director*; or
 - (b) no *director* other than the *ACD*, signed by the *ACD*.
- (3) Once signed, this account is the "final account" for the purposes of the winding up of an *ICVC* and the "termination account" for the purposes of the termination of a *sub-fund*.
- (4) The final account must state the date on which the *ICVC's* affairs were wound up and the date stated must be regarded as the final *day* of the accounting period of the *ICVC* then running ('final accounting period') for the purpose of ■ COLL 4.5.
- (4A) The termination account must state the date on which the *sub-fund's* affairs were terminated.
- (5) The *ACD* must ensure that the *ICVC's* auditor makes a report in respect of the final account or termination account, which states the auditor's opinion whether the final account or termination account has been properly prepared for the purpose of (1).

- (6) Within four *months* of the date of the completion of the winding up of the *ICVC* or termination of the *sub-fund*, the *ACD* must send a copy of the final account or termination account and the auditor's report on it to the *FCA* and to each *person* who was a *unitholder* (or the first named of joint *unitholders*) immediately before the winding up or termination commenced.

Duty to ascertain liabilities

7.3.9

R

- (1) The *ACD* must use all reasonable endeavours to ensure that all the liabilities of the *ICVC* or the *sub-fund* are discharged before the completion of the winding up or termination.
- (2) The duty in (1) relates to all liabilities of which the *ACD*:
- (a) is, or becomes, aware before the completion of the winding up or termination; or
 - (b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.
- (3) If the *ACD* rejects any claim against the *ICVC* or the *sub-fund* in whole or part or against the *ICVC* or the *sub-fund* in respect of a liability in whole or part, the *ACD* must immediately send to the claimant written notice of its reasons for doing so.

Reports and accounts

7.3.10

R

- (1) [deleted]
- (1A) [deleted]
- (2) For any *annual accounting period* or *half-yearly accounting period* which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any *unitholder* upon request.
- (3) The *ACD* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination including, if known, its likely duration.
- (4) The *ACD* must send a copy of the information required by (3) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with ■ COLL 7.3.7 R (5).

7.3.10A

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- (1) The effect of ■ COLL 7.3.10R is that the *ACD* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with ■ COLL 4.5.14 R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates at six-monthly or more frequent intervals.

Liabilities of the ACD

- 7.3.11 **R** (1) Except to the extent that the *ACD* can show that it has complied with **■ COLL 7.3.9 R** (Duty to ascertain liabilities), the *ACD* is personally liable to meet any liability of an *ICVC* or a *sub-fund*, of which it is the *ACD*, wound up or terminated under this section (whether or not the *ICVC* has been dissolved or, in the case of the *sub-fund*, termination has been completed) that was not discharged before the completion of the winding up or termination.
- (2) Where winding up an *ICVC*, if the proceeds of the realisation of the assets attributable, or allocated to a particular *sub-fund* of an *umbrella ICVC* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *ACD* must pay to the *ICVC*, for the account of that *sub-fund* the amount of the deficit, unless and to the extent that the *ACD* can show that the deficit did not arise as a result of any failure by the *ACD* to comply with the *rules* in *COLL*.
- (3) The liabilities of the *ACD* under this *rule* create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the *ICVC* in the circumstances described in (2)).
- (4) The obligations of the *ACD* under this *rule* do not affect any other obligation of the *ACD* under these *rules* or the general law.

7.3.12 **R** [deleted]

Miscellaneous

- 7.3.13 **R** (1) If:
- (a) during the course, or as a result, of the enquiry referred to in **■ COLL 7.3.5 R** (1) (Solvency statement), the *directors* become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that *rule*; or
- (b) after winding up or termination has commenced, the *ACD* becomes of the opinion that the *ICVC* or the *sub-fund* will be unable to meet all its liabilities within twelve *months* of the date of the statement provided under (a) of **■ COLL 7.3.5 R** (2);
- the *directors* must immediately present a petition or cause the *ICVC* or *sub-fund* to present a petition for the winding up of the *ICVC* or *sub-fund* as an unregistered company under Part V of the Insolvency Act 1986.
- (2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or termination has been sent to the *FCA*, there is a vacancy in the position of *ACD*:
- (a) the *directors* of the *ICVC* must immediately present or cause the *ICVC* or *sub-fund* to present; or
- (b) if there are no *directors*, the *depository* must immediately present;

a petition for the winding up of the *ICVC* or *sub-fund* as an unregistered company under Part V of the Insolvency Act 1986.



7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of COLL 7.4

7.4.1

G

- (1) This section deals with the circumstances and manner in which an *AUT* is to be wound up or a *sub-fund* of an *AUT* is to be terminated. Under section 256 of the *Act* (Requests for revocation of authorisation order), the *manager* or *trustee* of an *AUT* may request the *FCA* to revoke the *authorisation order* in respect of that *AUT*. Section 257 of the *Act* (Directions) gives the *FCA* the power to make certain directions.
- (2) The termination of a *sub-fund* under this section will be subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the *trust deed* and *prospectus* have been notified to the *FCA* in writing and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) An *AUT* or a *sub-fund* of an *AUT* may also be wound up or terminated in connection with a *scheme of arrangement*. *unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (4) ■ COLL 7.4.2A G gives an overview of the main steps in winding up an *AUT* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

Special meanings for termination of a sub-fund of an AUT

7.4.2

R

In this section, where a *sub-fund* of an *AUT* is being terminated, references to:

- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (2) a resolution or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

- (4) liabilities, are references to liabilities of the *AUT* allocated or attributable to the *sub-fund* to be terminated.

Guidance on winding up or termination

7.4.2A

G

This table belongs to ■ COLL 7.4.1 G (4) (Explanation of COLL 7.4)

Summary of the main steps in winding up an *AUT* or terminating a *sub-fund* under *FCA rules*

Notes: N = Notice to be given to the *FCA* under section 251 of the *Act*.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.4.5 R (4))

Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
1	Receive <i>FCA</i> approval	N + one <i>month</i> On receipt of notice from the <i>FCA</i>	Section 251 of the <i>Act</i>
2	Normal business ceases; notify <i>unitholders</i>	E	7.4.3R
3	<i>Trustee</i> to realise and distribute proceeds	ASAP after E	7.4.4R(1) to (5)
4	Send annual long report of <i>manager</i> and <i>trustee</i> to the <i>FCA</i>	Within 4 <i>months</i> of FAP	7.4.5R(5)
5	Request <i>FCA</i> to revoke relevant <i>authorisation order</i>	On completion of W/U	7.4.4R(6)

When an AUT is to be wound up or a sub-fund terminated

7.4.3

R

- (1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:
- (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing), ■ COLL 6.6.20R to ■ COLL 6.6.24G (Assessment of value) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *AUT* or to the *units* and *scheme property* in the case of a *sub-fund*;
 - (b) the *trustee* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.4.4 R (1) or ■ (2);
 - (c) the *manager* must cease to *sell* and redeem *units*;
 - (d) the *manager* must cease to arrange the *issue* or *cancellation of units* under ■ COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final *cancellation* under ■ COLL 7.4.4 R (1) or ■ (2);
 - (dA) no transfer of a *unit* may be registered and no other change to the *register of unitholders* may be made without the approval of the *person* responsible for the *register* in accordance with ■ COLL 6.4.4 R (1); and

- (e) the *trustee* must proceed to wind up the *AUT* or terminate the *sub-fund* in accordance with ■ COLL 7.4.4 R.
- (1A) If the *manager* has not previously notified *unitholders* of the proposal to wind up the *AUT* or terminate the *sub-fund*, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the *unitholders*.
- (1B) (a) This paragraph applies where a *person* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an *eligible CIS amount* relating to the *authorised fund* or *sub-fund*.
- (b) The *AUT* must not be wound up nor the *sub-fund* terminated under this section unless and until the *manager* and *trustee* have ensured that any records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6) (Maintenance of records) are:
- (i) accessible by the *manager* or the *trustee* and will be preserved; or
 - (ii) transferred to a *dormant asset fund operator* or to another *authorised person* that has undertaken to preserve them.
- (2) The events referred to in (1) are:
- (a) the *authorisation order* of the *AUT* is revoked;
 - (b) alterations to the *AUT's trust deed* and *prospectus* that will be required if the *sub-fund* is terminated taking effect in accordance with section 251 of the *Act*;
 - (c) the passing of an *extraordinary resolution* winding up the *AUT* or terminating the *sub-fund*, provided *FCA's* prior consent to the resolution has been obtained by the *manager* or *trustee*;
 - (d) in response to a request to the *FCA* by the *manager* or the *trustee* for the revocation of the *authorisation order*, the *FCA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *AUT*, the *FCA* will agree to that request;
 - (e) the expiration of any period specified in the *trust deed* as the period at the end of which the *AUT* is to be wound up or the *sub-fund* is to terminate;
 - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the *AUT* or *sub-fund* that is subject to the *scheme of arrangement* being left with no property; or
 - (g) the date on which a *relevant pension scheme* is notified in writing by The Pensions Regulator that the *scheme* is no longer registered under the Welfare and Pensions Reform Act 1999 as a *stakeholder pension scheme*.
- (3) This *rule* is without prejudice to ■ COLL 7.2.1 R(Requirement) and to any order or direction made under section 257 or 258 of the *Act*.

Manner of winding up or termination

7.4.4

R

- (1) Where **■ COLL 7.4.3 R (2) (f)** applies, the *trustee* must *cancel* all *units* in issue and wind up the *AUT* or terminate the *sub-fund* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within **■ COLL 7.4.3 R**:
 - (a) once the *AUT* falls to be wound up or *sub-fund* terminated, the *trustee* must realise the *scheme property*;
 - (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *trustee* must *cancel* all *units* in issue and distribute the proceeds of that realisation to the *unitholders* and the *manager* proportionately to their respective interests in the *AUT* or *sub-fund* as at the date, or the date of the relevant event referred to in **■ COLL 7.4.3 R**; and
 - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *trustee* after one year from the date on which they became payable must be paid by the *trustee* in accordance with (2A) or (2B), in either case subject to the *trustee* having a right to retain any expenses properly incurred by them relating to that payment.
- (2A) The *manager* must arrange for the *trustee* to transfer the unclaimed net proceeds or cash referred to in (2)(c) to a *dormant asset fund operator* in accordance with sections 8 and 9 of the Dormant Assets Act 2022 where:
 - (a) the *instrument constituting the fund* and the *prospectus* permit the transfer of unclaimed net proceeds or cash as referred to in (2)(c) to a *dormant asset fund operator* as *orphan monies*; and
 - (b) the *manager* is satisfied that the *orphan monies* are a *dormant asset*.
- (2B) Where, and to the extent that, (2A) does not apply, the unclaimed net proceeds or cash (see (2)(c) above) must be paid by the *trustee* into court (or, in Scotland, as the court may direct).
- (3) For an *AUT* which is a *relevant pension scheme*, payments must not be made to *unitholders* in the *AUT*, the realisation proceeds having to be paid by the *trustee* in accordance with the *trust deed*.
- (4) Where the *trustee* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *trustee* must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *trustee* for ensuring that, that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the events referred to in **■ COLL 7.4.3 R (2)(c)**, **■ COLL 7.4.3 R (2)(d)**, **■ COLL 7.4.3 R (2)(e)** or **■ COLL 7.4.3 R (2) (f)**, the *trustee* must notify the *FCA* in writing and at

the same time the *manager* or *trustee* must request the *FCA* to revoke the relevant *authorisation order*.

7.4.4A **G** For the purposes of this section, an *AUT* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *trustee* after consulting the *manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with ■ COLL 7.4.4 R (5); and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Transfers of orphan monies to a dormant asset fund operator

7.4.4B **G** (1) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding *money* that is attributable pro rata to a 'gone-away' *person* (see section 10 of the Dormant Assets Act 2022) can be transferred in this way.

(2) However, a *person* with whom the *manager* or the *trustee* is still in contact could be invited to donate de minimis amounts as *unwanted asset money* for transfer to the *dormant asset fund operator* (see ■ COLL 6.8.4AR (Unwanted asset money)).

Accounting and reports during winding up or termination

7.4.5 **R** (1) [deleted]

(1A) [deleted]

(2) For any *annual accounting period* or *half-yearly accounting period* which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any *unitholder* upon request.

(2A) The *manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.

(2B) The *manager* must send a copy of the information required by ■ COLL 7.4.5 R (2A) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with ■ COLL 7.4.4 R (2)(b).

(3) [deleted]

- (4) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.
- (5) Within four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund*, the annual reports of the *manager* and *trustee* must be published and sent to the FCA.
- (6) The *manager* must, on publication of the annual long report in (5), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free-of-charge on request.

7.4.6

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- (1) The effect of ■ COLL 7.4.5R is that the *manager* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with ■ COLL 4.5.14 R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates to *unitholders* at six-monthly or more frequent intervals.

7.4A Winding up a solvent ACS and terminating a sub-fund of a co- ownership scheme

Explanation of COLL 7.4A

7.4A.1

G

- (1) This section deals with the circumstances and manner in which an ACS is to be wound up or a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than by the court as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (further *rules* regarding *schemes of arrangement* are found in ■ COLL 7.6 (Schemes of arrangement)).
- (2) An ACS may be wound up under this section only if it is solvent. Under section 261W of the *Act* (Requests for revocation of authorisation order), the *authorised contractual scheme manager* or *depository* of an ACS may request the FCA to revoke the *authorisation order* in respect of that ACS. The FCA may then indicate that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to that request. Section 261X of the *Act* (Directions) gives the FCA the power to make certain directions.
- (3) A *sub-fund* of a *co-ownership scheme* may be terminated under this section only if it is solvent. The termination of a *sub-fund* under this section will be subject to section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depository). Termination can only commence once the proposed alterations to the *contractual scheme deed* and *prospectus* have been notified to the FCA in writing and permitted to take effect. On termination, the assets of a *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (4) An ACS or a *sub-fund* of a *co-ownership scheme* may also be wound up or terminated in connection with a *scheme of arrangement*. The requirements of section 261Q also apply in relation to a proposal that an ACS or a *sub-fund* of a *co-ownership scheme* be involved in a *scheme of arrangement*. *unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (5) ■ COLL 7.4A.3 G gives an overview of the main steps in winding up a solvent ACS or terminating a *sub-fund* of a *co-ownership scheme* under FCA rules, assuming FCA approval.

Special meanings in this section

7.4A.2

R

- (1) In this section, where a *sub-fund* of a *co-ownership scheme* is being terminated, references to:
- (a) *units*, are references to *units* of the *class* or *classes* related to the sub-fund to be terminated;
 - (b) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
 - (c) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
 - (d) liabilities, are references to liabilities of the *co-ownership scheme* allocated or attributable to the *sub-fund* to be terminated.
- (2) In this section:
- (a) a "section 261Q case" refers to:
 - (i) a case where a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than in connection with a *scheme of arrangement*; or
 - (ii) a case where an *ACS* or a *sub-fund* of a *co-ownership scheme* is to be wound up or terminated in connection with a *scheme of arrangement*; and
 - (b) a "section 261W case" refers to a case where an *ACS* is to be wound up otherwise than in connection with a *scheme of arrangement*.

Guidance on winding up or termination

7.4A.3

G

This table belongs to ■ COLL 7.4A.1G (5) (Explanation of ■ COLL 7.4A)

Summary of the main steps in winding up an *ACS* or terminating a *sub-fund* of a *co-ownership scheme* under *FCA rules*

Notes: N = Notice to be given to the *FCA* under section 261Q of the *Act* in a section 261Q case.

R = Request to wind up the *scheme* under section 261W of the *Act* in a section 261W case.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period

Step number	Explanation	When	<i>COLL rule</i> , (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 days or R-28 days	7.4A.5R(2)
2	Send audited solvency statement to the <i>FCA</i> with copy to <i>depository</i> .	By N + 21 days or by R + 21 days	7.4A.5R(4) and (5)

3	<p>In a section 261Q case:</p> <ul style="list-style-type: none"> - the <i>authorised contractual scheme manager</i> receiving FCA approval; - or one month having passed after submitting the requisite notice under section 261Q of the Act without the <i>authorised contractual scheme manager</i> or <i>depository</i> having received from the FCA a warning notice under section 261R in respect of the proposal. 	<p>N + one <i>month</i> or R + one <i>month</i></p>	<p>Section 261Q of the Act (in a section 261Q case) 7.4A.4R(3)(c) to (e) (in a section 261W case)</p>
	<p>In a section 261W case, the <i>authorised contractual scheme manager</i> or <i>depository</i> receives an indication from the FCA that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.</p>		
4	<p>Normal business ceases; notify <i>unitholders</i></p>	E	7.4A.4R
5	<p><i>Depository</i> to realise and distribute proceeds</p>	ASAP after E	7.4A.6R(1)-(5)
6	<p>Send annual long report of <i>authorised contractual scheme manager, depository</i> and auditor to the FCA</p>	<p>Within 4 <i>months</i> of FAP</p>	7.4A.9R(7)

7	Request <i>FCA</i> to revoke relevant <i>authorisation order</i>	On completion of <i>W/U</i>	7.4A.6R(6)
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When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

7.4A.4

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- (1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:
 - (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing), ■ COLL 6.6.20R to ■ COLL 6.6.24G (Assessment of value) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *ACS* or to the *units* and *scheme property* in the case of a *sub-fund* of a *co-ownership scheme*;
 - (b) the *depository* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.4A.6R (1) or ■ COLL 7.4A.6R (2) (Manner of winding up or termination);
 - (c) the *authorised contractual scheme manager* must cease to *sell* and *redeem units*;
 - (d) the *authorised contractual scheme manager* must cease to arrange the *issue* or *cancellation* of *units* under ■ COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final *cancellation* under ■ COLL 7.4A.6R (1) or ■ (2);
 - (e) no transfer of a *unit* may be registered and no other change to the *register* of *unitholders* may be made without the approval of the *person* responsible for the *register* in accordance with ■ COLL 6.4.4 R (1) (Register: general requirements and contents); and
 - (f) the *depository* must proceed to wind up the *ACS* or terminate the *sub-fund* in accordance with ■ COLL 7.4A.6 R.
- (2) If the *authorised contractual scheme manager* has not previously notified *unitholders* of the proposal to wind up the *ACS* or terminate the *sub-fund* of the *co-ownership scheme*, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the *unitholders*.
- (3) The matters referred to in (1) are:
 - (a) the *authorisation order* of the *ACS* is revoked;
 - (b) alterations to the *co-ownership scheme's contractual scheme deed* and *prospectus* that will be required if the *sub-fund* is terminated taking effect in accordance with section 261Q (Alteration of contractual schemes and changes of operator or depository) of the *Act*;
 - (c) the passing of an *extraordinary resolution* winding up the *ACS* or terminating the *sub-fund*, provided the *FCA's* prior consent to the resolution has been obtained by the *authorised contractual scheme manager* or *depository*;

- (d) in response to a request to the *FCA* by the *authorised contractual scheme manager* or the *depository* for the revocation of the *authorisation order*, the *FCA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *ACS*, the *FCA* will agree to that request;
 - (e) the expiration of any period specified in the *contractual scheme deed* as the period at the end of which the *ACS* is to be wound up or the *sub-fund* is to terminate;
 - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the *ACS* or *sub-fund* that is subject to the *scheme of arrangement* being left with no property;
 - (g) in the case of a *co-ownership scheme* that is an *umbrella*, the date on which all or the last of its *sub-funds* fall within (f) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *co-ownership scheme* may have assets and liabilities that are not attributable exclusively to any particular *sub-fund*.
- (4) An *ACS* must not be wound up nor a *sub-fund* terminated under this section unless the requirements of (a), (b) and (where relevant) (c) are satisfied:
- (a) An *ACS* must not be wound up nor a *sub-fund* terminated under this section unless and until:
 - (i) in a section 261Q case either:
 - (A) the *FCA* has given written approval to the proposal; or
 - (B) one *month* has passed since the *authorised contractual scheme manager* gave notice under section 261Q without the *authorised contractual scheme manager* or *depository* having received from the *FCA* a warning notice under section 261R in respect of the proposal; or
 - (ii) in a section 261W case, the *FCA* indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the *ACS*, the *FCA* will agree to the request to wind up the *ACS*.
 - (b) In addition an *ACS* must not be wound up nor a *sub-fund* terminated under this section unless a statement has been prepared and sent or delivered to the *FCA* under ■ COLL 7.4A.5 R (Solvency statement) and received by the *FCA* prior to the satisfaction of the condition in (a).
 - (c) (i) This sub-paragraph applies where a *person* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an *eligible CIS amount* relating to the *authorised fund* or *sub-fund*.
 - (ii) The *ACS* must not be wound up nor the *sub-fund* terminated under this section unless and until the *authorised contractual scheme manager* and the *depository* have ensured that any records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6) (Maintenance of records) are:
 - (A) accessible by the *authorised fund manager* or the *depository* and will be preserved; or

(B) transferred to a *dormant asset fund operator* or to another *authorised person* that has undertaken to preserve them.

- (5) This *rule* is without prejudice to:
- (a) ■ COLL 7.2.1 R (Requirement); or
 - (b) any order or direction made under section 261X (Directions) or 261Y (Applications to the court) of the *Act*; or
 - (c) any alternative method (aside from the *rules* in this section) of winding up a *limited partnership scheme* provided for by the law.

Solvency statement

7.4A.5

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- (1) Either before notice is given under section 261Q of the *Act* or before a request is made under section 261W of the *Act* in relation to the proposals referred to in ■ COLL 7.4A.4R (4), the *authorised contractual scheme manager* must make a full inquiry into the ACS's (or, in the case of the termination of a *sub-fund* of a *co-ownership scheme*, the *sub-fund's*) affairs, business and property to establish whether the ACS or the *sub-fund* will be able to meet all its liabilities.
- (2) The *authorised contractual scheme manager* must then, based on the results of this enquiry, prepare and sign a statement either:
 - (a) confirming that the ACS or the *sub-fund* of the *co-ownership scheme* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
 - (b) stating that such confirmation cannot be given.
- (3) This solvency statement must relate to the ACS's or the *sub-fund's* affairs, business and property at a date no more than 28 *days* before the date on which notice is given to the *FCA* under section 261Q or a request is made under section 261W.
- (4) A statement which contains the confirmation under (2) must annex a statement signed by the auditor of the ACS to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.
- (5) The solvency statement must be sent or delivered to the *FCA* and the *depository* no later than 21 *days* after notice is given to the *FCA* in accordance with section 261Q of the *Act* or the request made in accordance with section 261W of the *Act*.

Manner of winding up or termination

7.4A.6

R

- (1) Where ■ COLL 7.4A.4R (3)(f) applies, the *depository* must *cancel* all *units* in issue and wind up the ACS or terminate the *sub-fund* of the *co-ownership scheme* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within ■ COLL 7.4A.4 R:
 - (a) once the ACS falls to be wound up or *sub-fund* terminated, the *depository* must realise the *scheme property*;

- (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *depository* must *cancel all units* in issue and distribute the proceeds of that realisation to the *unitholders* and the *authorised contractual scheme manager* proportionately to their respective interests in the *ACS* or *sub-fund* as at the date, or the date of the relevant event referred to in ■ COLL 7.4A.4 R; and
 - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *depository* after one year from the date on which they became payable must be paid by the *depository* in accordance with (2A) or (2B), in either case subject to the *depository* having a right to retain any expenses properly incurred by them relating to that payment.
- (2A) The *authorised contractual scheme manager* must arrange for the *depository* to transfer the unclaimed net proceeds or cash referred to in (2)(c) to a *dormant asset fund operator* in accordance with sections 8 and 9 of the Dormant Assets Act 2022 where:
- (a) the *instrument constituting the fund* and the *prospectus* permit the transfer of unclaimed net proceeds or cash as referred to in (2)(c) to a *dormant asset fund operator* as *orphan monies*; and
 - (b) the *authorised contractual scheme manager* is satisfied that the *orphan monies* are a *dormant asset*.
- (2B) Where, and to the extent that, (2A) does not apply, the unclaimed net proceeds or cash referred to in (2)(c) must be paid by the *depository* into court (or, in Scotland, as the court may direct).
- (3) For an *ACS* which is a *relevant pension scheme*, payments must not be made to *unitholders* in the *ACS*. The realisation proceeds must be paid by the *depository* in accordance with the *contractual scheme deed*.
- (4) Where the *depository* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *depository* must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *depository* for ensuring that that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the matters referred to in ■ COLL 7.4A.4R (3)(c) to ■ (g), the *depository* must notify the *FCA* in writing and at the same time the *authorised contractual scheme manager* or *depository* must request the *FCA* to revoke the relevant *authorisation order*.

7.4A.7

G For the purposes of this section, an *ACS* may be treated as having been wound up or a *sub-fund* of a *co-ownership scheme* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *depository* after consulting the *authorised contractual scheme manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with ■ COLL 7.4A.6R (5); and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Transfers of orphan monies to a dormant asset fund operator

7.4A.7A

G

- (1) Under the Dormant Assets Act 2022, *orphan monies* may be transferred to a *dormant asset fund operator* where they are a *dormant asset*. This means that only the proportion of outstanding *money* that is attributable pro rata to a 'gone-away' *person* (see section 10 of the Dormant Assets Act 2022) can be transferred in this way.
- (2) However, a *person* with whom the *authorised contractual scheme manager* or the *depository* is still in contact could be invited to donate de minimis amounts as *unwanted asset money* for transfer to the *dormant asset fund operator* (see ■ COLL 6.8.4AR (Unwanted asset money)).

Duty to ascertain liabilities

7.4A.8

R

- (1) The *authorised contractual scheme manager* must use all reasonable endeavours to ensure that all the liabilities of the ACS or the *sub-fund* of a *co-ownership scheme* are discharged before the completion of the winding up or termination.
- (2) The duty in (1) relates to all liabilities of which the *authorised contractual scheme manager*:
 - (a) is, or becomes, aware before the completion of the winding up or termination; or
 - (b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.
- (3) If the *authorised contractual scheme manager* rejects any claim or liability against the ACS or the *sub-fund* in whole or part, the *authorised contractual scheme manager* must immediately send to the claimant written notice of its reasons for doing so.

Accounting and reports during winding up or termination

7.4A.9

R

- (1) [deleted]
- (2) [deleted]
- (3) For any *annual accounting period* or *half-yearly accounting period* which begins after commencement of the winding up or termination,

a copy of the long report must be supplied free of charge to any *unitholder* upon request.

- (4) The *authorised contractual scheme manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.
- (5) The *authorised contractual scheme manager* must send a copy of the information required by (4) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with ■ COLL 7.4A.6R (2)(b).
- (6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.
- (7) Within four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund* of the *co-ownership scheme*, the annual reports of the *authorised contractual scheme manager* and *depository* must be published and sent to the *FCA*.
- (8) The *authorised contractual scheme manager* must, on publication of the annual long report in (7), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free of charge on request.

7.4A.10 G

- (1) The effect of ■ COLL 7.4A.9R is that the *authorised contractual scheme manager* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with ■ COLL 4.5.14R (Publication and availability of annual and half-yearly long report).
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates to *unitholders* at six-monthly or more frequent intervals.

Liabilities of the authorised contractual scheme manager.....

7.4A.11 R

- (1) Except to the extent that the *authorised contractual scheme manager* can show that it has complied with ■ COLL 7.4A.8 R (Duty to ascertain liabilities), the *authorised contractual scheme manager* is personally liable to meet any liability of an *ACS* or a *sub-fund* of a *co-ownership scheme*, of which it is the *authorised contractual scheme manager*, wound up or terminated under this section (whether or not the winding up of the *ACS* or the termination of the *sub-fund* has been completed) that was not discharged before the completion of the winding up or termination.
- (2) Where winding up an *ACS*, if the proceeds of the realisation of the assets attributable or allocated to a particular *sub-fund* of an *umbrella co-ownership scheme* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *authorised contractual scheme manager* must pay to the *ACS*, for the account of that *sub-fund*, the amount of the deficit, unless and to the extent that the

authorised contractual scheme manager can show that the deficit did not arise as a result of any failure by the *authorised contractual scheme manager* to comply with the rules in COLL.

- (3) The liabilities of the *authorised contractual scheme manager* under this rule create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).
- (4) The obligations of the *authorised contractual scheme manager* under this rule do not affect any other obligation of the *authorised contractual scheme manager* under these rules or the law.

Miscellaneous

7.4A.12

R

If:

- (1) during the course, or as a result, of the enquiry referred to in ■ COLL 7.4A.5R (1) (Solvency statement), the *authorised contractual scheme manager* becomes of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or
- (2) after winding up or termination has commenced, the *authorised contractual scheme manager* becomes of the opinion that the ACS or the *sub-fund* of a *co-ownership scheme* will be unable to meet all its liabilities within twelve months of the date of the statement provided under ■ COLL 7.4A.5R (2)(a);

the *authorised contractual scheme manager* must immediately present a petition or cause the ACS or *sub-fund* to present a petition for the winding up of the ACS or *sub-fund* as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, as modified by the *Contractual Scheme Regulations*.



7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

7.5.1

G

- (1) The *FCA* expects that the majority of requests it will receive for the winding up of an *authorised fund* (under regulation 21(1) of the *OEIC Regulations* or under sections 256 or 261W of the *Act*) or termination of a *sub-fund* will be from *authorised fund managers* and *depositories* who consider that the *AUT*, *ACS*, *ICVC* or *sub-fund* in question is no longer commercially viable.
- (2) It is in *consumers'* interests to minimise, as far as possible, the period between which the *FCA* receives such requests and responds to them. To assist the *FCA* in arriving at a quick decision, based on all the relevant factors, it would be helpful for the *FCA* to receive the information listed at ■ COLL 7.5.2 G. Further information, however, may be requested by the *FCA* after receipt of the information, depending on the individual circumstances of the case.

Information to be provided to the FCA

7.5.2

G

The information referred to in ■ COLL 7.5.1 G is listed below:

- (1) the name of the *authorised fund* or *sub-fund*;
- (2) the size of the *authorised fund* or *sub-fund*;
- (3) the number of *unitholders*;
- (4) whether dealing in *units* has been suspended;
- (5) why the request is being made;
- (6) what consideration has been given to the *authorised fund* or *sub-fund* entering into a *scheme of arrangement* with another *regulated collective investment scheme* and the reasons why a *scheme of arrangement* is not feasible;
 - (7) (a) whether *unitholders* have been informed of the intention to seek termination, winding up or revocation; and
 - (b) if not, when they will be informed;
- (8) details of any proposed preferential switching rights offered or to be offered to *unitholders*;

- (9) details of any proposed rebate of charges to be made to *unitholders* who recently purchased *units*;
- (9A) where a *person* who is or was a *unitholder* in the *authorised fund* or *sub-fund* may have a right to make a *repayment claim* under sections 9 to 11 of the Dormant Assets Act 2022, in respect of an *eligible CIS amount* relating to that *authorised fund* or *sub-fund*, details as to the steps taken by the *authorised fund manager* to ensure that the relevant records (see ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6) (Maintenance of records)) are preserved;
- (10) where the costs of winding up or termination will fall;
- (11) the *depository's*:
 - (a) statement whether having taken reasonable care it is certain that a *scheme of arrangement* is not feasible and explaining what steps have been considered that would result in the *authorised fund* or *sub-fund* not needing to wind up or terminate (for example, appointing a replacement *authorised fund manager*); and
 - (b) confirmation that it will not or does not expect to qualify a report made in accordance with ■ COLL 4.5.11 R (Report of the depository);
- (12) the preferred date for the *FCA's* determination to revoke authorisation or the date for the commencement of the winding up or termination; and
- (13) any additional information or material considered to be relevant to the *FCA's* decision under sections 251, 256, 261Q and 261W of the Act or regulation 21 of the *OEIC Regulations* (as appropriate).

7.6 Schemes of arrangement

Schemes of arrangement: explanation

7.6.1

G

- (1) A proposal that an *authorised fund* should be involved in a *scheme of arrangement* is subject to written notice to and approval by the *FCA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company). Effect cannot be given to such a change except in accordance with that section or regulation.
- (2) The *issue of units* in exchange for assets as part of an approved *scheme of arrangement* is subject to:
 - () ■ COLL 6.2.5 R and ■ COLL 6.2.6 R (Issue and cancellation of units);
 - () ■ COLL 6.2.15 R (In specie issue and redemption); and
 - () ■ COLL 7.6.2 R (Scheme of arrangement: requirements).
- (3) ■ COLL 7.6.2 R (3) to ■ (6) apply to a *domestic UCITS merger*. Arrangements constituting any such merger are in addition subject to the requirements of ■ COLL 7.7 (UCITS mergers).

Schemes of arrangement: requirements

7.6.2

R

- (1) If a *scheme of arrangement* is entered into in relation to an *authorised fund* ("transferor fund") or a *sub-fund* of a *scheme* which is an *umbrella* ("transferor sub-fund"), an *authorised fund manager* must ensure that the *unitholders* of the transferor fund or *sub-fund* do not become *unitholders* of *units* in a *collective investment scheme* other than a *regulated collective investment scheme*.
- (2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* excludes any *recognised scheme* which is not authorised under the *UCITS Directive* in an *EEA State*.
- (3) Where, for the purpose of a *scheme of arrangement*, it is proposed that *scheme property* of an *authorised fund* should become the property of another *regulated collective investment scheme* or *sub-fund* of a *regulated collective investment scheme*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund*, unless (4) applies.

- (4) Where, for the purposes of a *scheme of arrangement*, it is proposed that *scheme property* attributable to a *sub-fund* of an *umbrella* should become the property of another *regulated collective investment scheme* or of another *sub-fund* of a *regulated collective investment scheme* (whether or not of that *umbrella*), the proposal must not be implemented without the sanction of:
- (a) an *extraordinary resolution* of the *unitholders* in the *sub-fund* of that *umbrella*; and
 - (b) (unless implementation of the *scheme of arrangement* is not likely to result in any material prejudice to the interests of the *unitholders* in any other *sub-fund* of that *umbrella*) an *extraordinary resolution* of the *unitholders* of *units* in that *umbrella*.
- (5) If it is proposed that an *authorised fund* or *sub-fund* of an *umbrella* should receive property (other than its first property) as a result of a *scheme of arrangement* (or an arrangement equivalent to a *scheme of arrangement*) which is entered into by some other *collective investment scheme* or *sub-fund*, or by a *body corporate*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund* or (as the case may be) of the *class* or *classes* of *units* related to the *sub-fund* unless (6) applies.
- (6) This paragraph (6) applies if the *directors* of the *ICVC* or the *authorised fund manager* and *depository* of the *AUT* or *ACS* agree that the receipt of the property concerned for the account of the *ICVC*, *AUT* or *ACS*:
- (a) is not likely to result in any material prejudice to the interests of the *unitholders* of the *authorised fund*;
 - (b) is consistent with the objectives of the *authorised fund* or *sub-fund*; and
 - (c) could be effected without any breach of a *rule* in ■ COLL 5(Investment and borrowing powers).
- (7) If it is proposed that the *scheme property* of an *authorised fund* or a *sub-fund* of an *umbrella* should become the property of a *recognised scheme*, the *authorised fund manager* of the *authorised fund* or *sub-fund* must ensure that the *document* it provides to *unitholders* setting out the proposal contains a prominent statement of the matters required to be disclosed by ■ COLL 9.5.5R and ■ COLL 9.5.6R (Preparation and maintenance of a prospectus relating to an OFR recognised scheme).

Prior transfers under the Dormant Assets Act 2022

7.6.3

R

- (1) This *rule* applies where:
- (a) a *scheme of arrangement* is entered into in relation to a transferor fund or a transferor *sub-fund*;
 - (b) a *person* who is or was at any time the *authorised fund manager* or (where relevant) the *depository* of the transferor fund or transferor *sub-fund* transferred *eligible CIS amounts* as *dormant assets* to a *dormant asset fund operator*; and

- (c) such *dormant assets* are or were attributable to the transferor fund or transferor *sub-fund*.
- (2) The *authorised fund manager* of the transferor fund or transferor *sub-fund* must ensure that under the terms of the *scheme of arrangement* the records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6):
 - (a) will be properly maintained;
 - (b) will be updated, where appropriate; and
 - (c) will remain accessible,so that the amount of any *repayment claim* can be readily calculated and verified by the appropriate *person*.
- (3) In this *rule*, 'transferor fund' and 'transferor *sub-fund*' have the same meanings as in ■ COLL 7.6.2R.

7.7 UCITS mergers

Application

7.7.1 **R** This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, any other *director* of an *ICVC* and the *depository* of any such *scheme* where, in each case, the *AUT*, *ACS* or *ICVC* is a *UCITS scheme* that is a party to:

- (1) a *domestic UCITS merger*.
- (2) [deleted]

7.7.2 **G** (1) The effect of **COLL 7.7.1 R**, and in particular the narrow *Glossary* definition of *domestic UCITS merger*, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them was the subject of a *UCITS marketing notification* before *IP completion day*.

- (2) [deleted]

References to a UCITS scheme

7.7.3 **R** In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS* or to a *receiving UCITS* include the *sub-fund* of any such *scheme*.

- (2) [deleted]

[Note: article 37 of the *UCITS Directive*]

UCITS mergers

7.7.4 **R** A *domestic UCITS merger* between two or more *UCITS schemes* is permissible provided:

- (1) it is effected in accordance with the requirements of:
 - (a) the *UCITS Regulations 2011*, which include the need for the *FCA* to have made a prior order approving the proposed merger (which may be made subject to (2)); and
 - (b) this chapter; and
- (2) in the case of a *UCITS scheme* that is:

- (a) a *merging UCITS*, an *extraordinary resolution* is approved by *unitholders* in accordance with ■ COLL 7.6.2 R (3) and ■ (4) (Schemes of arrangement: requirements); and
- (b) a *receiving UCITS*, the *authorised fund manager* and *depository* of the *AUT* or *ACS* and the *directors* of the *ICVC* comply with ■ COLL 7.6.2 R (5) and ■ (6).

[Note: articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

Meetings of unitholders

7.7.5

G

- (1) The effect of ■ COLL 7.7.4 R (2)(a) is that the 75% majority that is needed in support for an *extraordinary resolution* of *unitholders* to be passed is without prejudice to the presence quorum that is required by ■ COLL 4.4.6 R (Quorum).
- (2) Any meeting of *unitholders* that is needed to give effect to a proposed *UCITS merger* is subject to the requirements of ■ COLL 4.4 (Meeting of unitholders and service of notices).

UCITS Regulations 2011

7.7.6

G

- (1) The requirements and the process which must be followed to give effect to a proposal for a *domestic UCITS merger* are in Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:
 - (a) the merger must be a *domestic UCITS merger* which takes the form of a scheme of arrangement;
 - (b) the need for the *FCA* to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the *UCITS Regulations 2011*;
 - (c) the information that has to be given to the *FCA* in order to obtain the approval under (b);
 - (d) the need for draft terms of merger to be prepared;
 - (e) the role of the relevant *depositories* and auditors;
 - (f) the need for appropriate and accurate information to be prepared for the benefit of *unitholders*;
 - (g) rights of *redemption* and suspension of *dealing* in *units* in the relevant *UCITS*; and
 - (h) the consequences of the proposed merger.
- (2) *Firms* are advised that they do not need to seek approval from the *FCA* under section 251 (Alteration of schemes and changes of manager or trustee) or 261Q (Alteration of contractual schemes and changes of operator or depository) of the *Act* or, as the case may be, regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* where they are required to obtain the prior approval of the *FCA* to a proposed merger under regulation 9 of the *UCITS Regulations 2011*.
- (3) [deleted]

Common draft terms of merger

7.7.7

R

- (1) The *authorised fund manager* of a *UCITS* scheme that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS* merger, must in conjunction with any other *authorised fund manager* draw up common draft terms of the proposed *UCITS* merger.
- (2) The common draft terms in (1) must set out the following particulars:
 - (a) the *UCITS* involved;
 - (b) the background to and the rationale for the proposed *UCITS* merger;
 - (c) the expected impact of the proposed *UCITS* merger on the *unitholders* of both the *merging UCITS* and the *receiving UCITS*;
 - (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the *UCITS* on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the *UCITS Regulations 2011*;
 - (e) the calculation method of the exchange ratio;
 - (f) the planned effective date of the *UCITS* merger;
 - (g) the rules applicable respectively to the transfer of assets and the exchange of *units*; and
 - (h) in the case of a *UCITS* merger where the *receiving UCITS* or the *sub-fund* is being specially formed for the purpose, the *instrument constituting the fund* of the newly constituted *receiving UCITS*.

[Note: article 40(1) of the *UCITS Directive*]

7.7.8

G

The *management companies* of the *merging UCITS* and the *receiving UCITS* may decide to include further items in the common draft terms of the *UCITS* merger.

[Note: article 40(2) of the *UCITS Directive*]

Prior transfers under Dormant Assets Act 2022

7.7.8A

R

- (1) This *rule* applies where:
 - (a) a *person* who is or was at any time the *authorised fund manager* or (where relevant) the *depository* of a *merging UCITS* transferred *eligible CIS amounts* as *dormant assets* to the *dormant asset fund operator*; and
 - (b) such *dormant assets* are or were attributable to the *merging UCITS*.
- (2) The *authorised fund manager* of the *merging UCITS* must ensure that under the terms of the proposed *UCITS* merger the records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6):
 - (a) will be properly maintained;
 - (b) will be updated, where appropriate; and
 - (c) will remain accessible,

so that the amount of any *repayment claim* can be readily calculated and verified by the appropriate *person*.

Verification by the depositary

7.7.9

R

The *depositary* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must verify that the statements in the common draft terms of merger required under ■ COLL 7.7.7 R (2)(a), ■ (f) and ■ (g), to the extent they relate to the *scheme* for which it is the *depositary*, conform with the provisions of the *regulatory system* and the *instrument constituting the fund*.

[Note: article 41 of the *UCITS Directive*]

Information to be given to unitholders

7.7.10

R

(1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must ensure that a *document* containing appropriate and accurate information on the merger is provided to the *unitholders* of that *scheme* so as to enable them to:

- (a) make an informed judgment about the impact of the proposal on their investment;
- (b) exercise their rights under regulation 12 (Right of redemption) of the *UCITS Regulations 2011*; and
- (c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with ■ COLL 7.7.4 R (2)(a) (UCITS mergers).

(2) Where a *UCITS scheme* is the *merging UCITS* in a *domestic UCITS merger* its *authorised fund manager* must provide the information *document* in (1):

- (a) to the *unitholders* of the *merging UCITS* and (in the case of a *domestic UCITS merger*) the *receiving UCITS* only after the *FCA* has given its approval to the *UCITS merger* proposal under regulation 9 of the *UCITS Regulations 2011*,
- (b) [deleted]

at least 30 days before the last date by which *unitholders* may request repurchase or *redemption* of their *units* or, where applicable, conversion without additional charge.

(3) The information *document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:

- (a) the background to and the rationale for the proposed *UCITS merger*;
- (b) the possible impact of the proposed *UCITS merger* on *unitholders*, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the *UCITS merger*;

- (c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:
 - (i) the right to obtain additional information;
 - (ii) the right to obtain a copy of the report of the independent auditor or the *depository* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011*;
 - (iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011*; and
 - (iv) the last date for exercising that right;
- (d) the relevant procedural aspects and the planned effective date of the merger; and
- (e) a copy of the *key investor information* of the *receiving UCITS*.

(4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant *EEA State* in which *units* of the *UCITS scheme* have been marketed, or in a language approved by the overseas regulator in that *EEA State*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[Note: article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

General rules regarding the content of merger information to be provided to unitholders

7.7.11

R

- (1) The information *document* that must be provided to *unitholders* under ■ COLL 7.7.10 R (Information to be given to unitholders) by the *authorised fund manager* of a *UCITS scheme* must be written in a concise manner and in non-technical language.
- (2) [deleted]
- (3) The information to be provided to the *unitholders* of the *merging UCITS* must meet the needs of investors who have no prior knowledge of the features of the *receiving UCITS* or of the manner of its operation, drawing their attention to the *key investor information* of the *receiving UCITS* and emphasising the desirability of reading it.
- (4) The information to be provided to the *unitholders* of the *receiving UCITS* must focus on the operation of the merger and its potential impact on the *receiving UCITS*.

[Note: article 3 of the *UCITS implementing Directive No 2*]

7.7.12

G

- (1) The information provided to *unitholders* under ■ COLL 7.7.10 R and ■ COLL 7.7.13 R on any proposed *merger* should reflect the different needs of the *unitholders* of the *merging UCITS* and the *receiving UCITS* and assist their understanding of what is being proposed.

- (2) The reference to "conversion" in ■ COLL 7.7.10 R (2) means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[Note: recital (1) of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

7.7.13

R

- (1) The information *document* that the *authorised fund manager* of a *merging UCITS* must provide to its *unitholders* under ■ COLL 7.7.10 R (3)(b) must also include:
- (a) details of any differences in the rights of *unitholders* of the *merging UCITS* before and after the proposed *UCITS merger* takes effect;
 - (b) if the *key investor information* of the *merging UCITS* and the *receiving UCITS* show *synthetic risk and reward indicators* in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
 - (c) a comparison of all charges, fees and expenses for both *schemes*, based on the amounts disclosed in their respective *key investor information*;
 - (d) if the *merging UCITS* applies a performance-related fee, an explanation of how it will be applied up to the point at which the *merger* becomes effective;
 - (e) if the *receiving UCITS* applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those *unitholders* who previously held *units* in the *merging UCITS*;
 - (f) in cases where costs associated with the preparation and the completion of the *merger* may be charged to either the *merging* or the *receiving UCITS* or any of their *unitholders*, details of how those costs are to be allocated; and
 - (g) an explanation of whether the *authorised fund manager* of the *merging UCITS* itself intends to undertake any *rebalancing of the portfolio* before the merger takes effect.
- (2) The information to be provided under ■ COLL 7.7.10 R (3)(c) must also include:
- (a) details of how any accrued income in each *scheme* is to be treated; and
 - (b) an indication of how the report of the independent auditor or the *depository* may be obtained.
- (3) The information to be provided in accordance with ■ COLL 7.7.10 R (3)(d) must include:
- (a) where required by ■ COLL 7.6.2 R (Schemes of arrangement: requirements), the procedure by which *unitholders* will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

- (b) the details of any intended suspension of *dealing* in *units* to enable the merger to be carried out efficiently; and
 - (c) when the merger will take effect in accordance with regulation 13 of the *UCITS Regulations 2011*.
- (4) The information to be provided to the *unitholders* of the *merging UCITS* must include:
- (a) the period during which those *unitholders* will be able to continue making subscriptions and requesting *redemptions* of *units* in the *scheme*;
 - (b) the time when those *unitholders* not making use of their rights granted under regulation 12 of the *UCITS Regulations 2011*, within the relevant time limit, will be able to exercise their rights as *unitholders* of the *receiving UCITS*; and
 - (c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the *unitholders* of the *merging UCITS*, those *unitholders* who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the *UCITS Regulations 2011* within the relevant time limit, will become *unitholders* of the *receiving UCITS*.
- (5) If a summary of the key points of the merger proposal is provided at the beginning of the *document* providing information on the merger proposal, it must cross-refer to the parts of the *document* where further information is provided.

[Note: article 4 of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14

R

- (1) The information that the *authorised fund manager* of a *receiving UCITS* must provide to its *unitholders* under ■ COLL 7.7.10 R (3)(b) must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the *receiving UCITS*, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.
- (2) In addition to (1), the *authorised fund manager* of the *receiving UCITS* must provide to its *unitholders* the information referred to in ■ COLL 7.7.13 R (2), ■ (3), and ■ (5).

[Note: article 4 of the *UCITS implementing Directive No 2*]

7.7.15

G

- (1) An *authorised fund manager* may add other information to that which is required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R if it considers that it is relevant in the context of the proposed *UCITS merger*. For example, it may be appropriate for the information provided in accordance with ■ COLL 7.7.13 R (3)(a) to contain a recommendation by the respective *authorised fund manager* of an *AUT* or *ACS* or the *directors* of an *ICVC* as to the course of action the *unitholders* should take.

(2) Where an *authorised fund manager* chooses to include a summary of the key points as allowed by ■ COLL 7.7.13 R (5), its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.

[Note: recitals (2) and (3) and article 4(6) of the *UCITS implementing Directive No 2*]

Key investor information

7.7.16 **R** The *authorised fund manager* of a *merging UCITS* must provide an up-to-date version of the *key investor information* of the *receiving UCITS* to its existing *unitholders*.

[Note: article 5(1) of the *UCITS implementing Directive No 2*]

7.7.17 **R** [deleted]

New unitholders

7.7.18 **R** Between the date when the information required under ■ COLL 7.7.10 R is provided to *unitholders* and the date when the merger takes effect, the information document and the up-to-date *key investor information* of the *receiving UCITS* must be provided to each *person* who purchases or subscribes for *units* in either the *merging UCITS* or the *receiving UCITS* or who asks to receive copies of the *instrument constituting the fund*, *prospectus* or *key investor information* of either scheme.

[Note: article 6 of the *UCITS implementing Directive No 2*]

Method of providing merger information to unitholders

7.7.19 **R** The *authorised fund manager* of the *merging UCITS* and the *receiving UCITS* must provide the information required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R to *unitholders* in a *durable medium*.

[Note: article 7 of the *UCITS implementing Directive No 2*]

Merger costs

7.7.20 **R** The *authorised fund manager* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the *UCITS merger* are not charged to either *scheme* or to any of its *unitholders*.

[Note: article 46 of the *UCITS Directive*]

Effective merger date, exchange ratio calculation date and publication of merger

7.7.21 **G** (1) In a *domestic UCITS merger*, the effective date of the merger will be the date specified by the *FCA* in its order authorising the proposed merger in accordance with regulation 9 of the *UCITS Regulations 2011*.

(2) [deleted]

(3) For the *receiving UCITS* in a *domestic UCITS merger*:

- (a) the date for calculating the exchange ratio of *units* of the *merging UCITS* into *units* of the *receiving UCITS* and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and
- (b) the *FCA* will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the *Act* in accordance with regulation 14 of the *UCITS Regulations 2011*.

(4) [deleted]

[Note: article 47 of the *UCITS Directive*]

Confirmation obligation on completion of a UCITS merger

7.7.22

R

The *authorised fund manager* of the *receiving UCITS* in a *domestic UCITS merger* must confirm in writing to the *depository* of the *UCITS scheme* and the *FCA* that the merger transfer is complete.

[Note: article 48(4) of the *UCITS Directive*]

7.7.23

G

Regulation 13 of the *UCITS Regulations 2011* sets out the conditions that must be fulfilled for a merger transfer to be considered complete.

7.8 Side pockets

Application

7.8.1

R

- (1) Subject to (2), this section applies to:
 - (a) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
 - (b) any other *director* of an *ICVC*;
 - (c) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
 - (d) an *ICVC*,which is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) This section does not apply to a *scheme* which is a *regulated money market fund*.

7.8.2

G

- (1) This section sets out the terms on which the *authorised fund manager* of a *scheme* holding *affected investments* can segregate those *affected investments* from the other assets held in the *scheme property* by establishing a *side pocket class*.
- (2) The purpose of the *rules* in this section is to advance the *FCA's* consumer protection and integrity objectives (see s1B(3) of the *Act*) by helping *authorised fund managers* deal with the consequences of the Russian invasion of Ukraine.
- (3) The *rules* in this section apply other *rules* in *COLL*, where necessary, with appropriate modifications, as well as imposing certain additional requirements.

Financial sanctions regimes relating to Russia

7.8.3

G

- (1) The definition for a 'sanctioned investment' in the *Glossary* (which is incorporated in the definition for 'affected investment') relates to the financial sanctions regimes of the Group of 7 (G7) countries comprising Canada, France, Germany, Italy, Japan, the *United Kingdom* and the United States of America, plus the *EU*, as those sanctions regimes relate to Russia.
- (2) Before deciding whether to create a *side pocket class* and determining the arrangements under which the *class* is to operate, the *authorised fund manager* will need to understand the legal requirements and obligations that apply under the relevant financial sanctions regimes. The *authorised fund manager* will need to be

satisfied that creation of the *side pocket class* and the operational arrangements for the *class* will comply with those regimes.

- (3) The *UK's* financial sanctions regime is set out in the Russia (Sanctions) (EU Exit) Regulations 2019. The Regulations are available at <https://www.legislation.gov.uk/uksi/2019/855/contents>. The *UK* regime prohibits certain types of activity and conduct, including dealing with funds and economic resources, and dealing with transferable securities and money-market instruments, subject to certain exceptions. Contravention of these prohibitions constitutes a criminal offence.
- (4) The Office of Financial Sanctions Implementation (OFSI) (part of HM Treasury) helps to ensure that the *UK* financial sanctions regime is properly understood, implemented and enforced in the *United Kingdom*.

Conditions for creating a side pocket class

- (1) If all the conditions in (2) are satisfied, the *authorised fund manager* of a *scheme* holding *affected investments* in the *scheme property* may, after consulting with the *depository*, create a *side pocket class*.
- (2) The conditions are:
 - (a) The *authorised fund manager* has determined that the *affected investment* in (1) is:
 - (i) a *sanctioned investment*;
 - (ii) a *unit* in a *collective investment scheme* or a *share* in an *AIF* within the meaning of paragraph (2)(b)(vii) of the definition of 'affected investment'; or
 - (iii) to the extent not in (i) or (ii), an *affected investment* for which there are no accurate, reliable and regular prices.
 - (b) The *authorised fund manager* has determined that:
 - (i) creating the *side pocket class* will protect the interests of *unitholders*;
 - (ii) the rights of any *unit* in a *side pocket class* will not be unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any other *class* of *units* in the *scheme*;
 - (iii) the *issue* of *units* in the *side pocket class* will be in the best interests of *unitholders*, the *authorised fund* and the integrity of the market; and
 - (iv) all the *unitholders* in the *authorised fund* will be treated fairly.
 - (c) The *instrument constituting* the *fund* and the *prospectus*:
 - (i) provide for the *issue* of *units* in a *side pocket class*; and
 - (ii) set out the terms on which that *class* will operate, in accordance with the *rules* in, and applied by, this section (see in particular ■ COLL 7.8.13R (Modified application of COLL 4.2 (Pre-sale notifications))).

- (3) Before making the determination in (2)(b), the *authorised fund manager* must consider:
 - (a) at least each of the matters specified in ■ COLL 7 Annex 1 (Matters to be considered by the authorised fund manager before creating a side pocket class); and
 - (b) whether it would be in the interest of all the *unitholders* in the *authorised fund* to suspend *dealings* in *units* in accordance with ■ COLL 7.2.1R (Requirement) instead of creating a *side pocket class*.
- (4)
 - (a) The decision to create a *side pocket class* pursuant to (1) must be taken by the *authorised fund manager's governing body*.
 - (b) The *authorised fund manager* must make a record of the *governing body's* decision and the reasons for it.

Side pocket classes

7.8.5

R

- (1) The *authorised fund manager* may:
 - (a) issue *units* in a new *class* to *unitholders* in the *authorised fund*; or
 - (b) convert a *unit* in an existing *class* into *units* in one or more new *classes*.
- (2) Where the *authorised fund manager* has taken an action pursuant to (1)(a) or (1)(b), it must determine the *price* of *units* of each existing and new *class* by reference to a valuation of the portions of *capital property* and *income property* represented by either:
 - (a) one or more *affected investments* held in the *scheme property*; or
 - (b) the *scheme property* excluding some or any such *affected investments*,as provided for in the *instrument constituting the fund* and the *prospectus*.
- (3) A new *class* within (2)(a) is referred to as a 'side pocket class'.
- (4) The *authorised fund manager* must determine the date and time on which the *units* in the new *class* are to be *issued*.
- (5) On the date and time specified in (4):
 - (a) the combined net asset value of all *units* of the new *class* and all *units* of the existing *class*; or
 - (b) the combined net asset value of any new *classes* of *unit issued* by conversion from an existing *class* of *unit*,must equal the net asset value of all *units* of the *class* or *classes* that existed immediately before the specified date and time.
- (6) On the date and time specified in (4), the number of *units* held by a *unitholder* in a new *class* must be proportionate to the number of *units* held by them in an existing *class* immediately before such date and time.

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7.8.6 **R** The *prospectus* of the *authorised fund* must limit the *issue* of *units* in a *side pocket class* after the date and time specified in **■ COLL 7.8.5R(4)** (see **■ COLL 7.8.30R(5)** (Modified application of COLL 6.2 (Dealing))).

7.8.7 **G**

- (1) An *authorised fund manager* intending to *issue units* in a new *class* will need to consider the effect of section 235(4) of the *Act*. In broad terms, this provides that if the contributions of the *participants* and the profits or income out of which payments are to be made to them are pooled in relation to separate parts of the *scheme property*, the arrangements are not to be regarded as constituting a single *collective investment scheme* unless the participants are entitled to exchange rights in one part for rights in another (see section 235(4) of the *Act* (Collective investment schemes)).
- (2) The *authorised fund manager* of an *ICVC* will also need to consider the effect of section 236(3) (Open-ended investment companies) of the *Act*. **■ PERG 9.6** (The investment condition (section 236(3) of the *Act*): general) sets out the *FCA's* view of this provision. In particular, **■ PERG 9.6.3G** and **■ PERG 9.6.4G** provide *guidance* on situations where an *ICVC* issues shares or securities that may not satisfy the investment condition.

Allocation of scheme property to a side pocket class

7.8.8 **G**

- (1) The *authorised fund manager* will need to consider carefully how to apply a fair accounting treatment when a *side pocket class* is created.
- (2) Where the *unit price* is determined only by reference to *affected investments* that are themselves valued at or close to zero, then a *unit* in the *side pocket class* will have minimal value. Where a portion of the *income property* of the *scheme* is attributable to *affected investments*, the unit price of the *side pocket class* should include that element of income.
- (3) The *authorised fund manager* may determine that a proportion of uninvested cash held in the *capital property* of the *scheme* should be attributed to the *side pocket class*, as a provision against costs and charges attributable to the *class* in the future. This will depend on the *authorised fund manager's* policy for the treatment of costs and charges (see also **■ COLL 7.8.36R** (Modified application of COLL 6.7 (Payments))). If the *side pocket class* has an overdrawn cash position, it should not be netted off against a positive cash position attributable to other *classes*.
- (4) Some *authorised fund managers* may wish to use *derivatives* and forward transactions within the *side pocket class* to hedge exposure to currency fluctuations affecting asset valuations, especially if the *affected investments* acquire value at a later point. *Authorised fund managers* may also wish to replicate currency *class* hedging arrangements where these already exist. Such activities will require an allocation of *capital property* to cover transaction costs and margin requirements.
- (5) Decisions whether to undertake the activities in (4) should be taken by the *authorised fund manager* based on its judgment of *unitholders' reasonable expectations* and future best interests. The

authorised fund manager should take particular care to ensure its risk management process is properly applied to analyse the possible harm that could arise from such transactions. See also ■ COLL 7.8.26R (Side pockets: modified application of COLL 5 (Investment and borrowing powers)) and the related guidance in ■ COLL 7.8.27G.

Costs and charges for a side pocket class

7.8.9

G

- (1) The *FCA* accepts that a *side pocket class* should bear a proportionate share of the costs and charges which arise and are incurred for the benefit of all *unitholders*, such as depositary expenses and fees, audit fees, and regulatory charges. The *authorised fund manager*, in managing and administering the *authorised fund*, will also incur necessary expenses which it may recover from the *scheme property*. The *FCA* would not expect *unitholders* in *classes* without any interest in the *affected investments* to cross-subsidise the costs and charges of managing the *side pocket class*. Such costs and charges may be recovered in the first instance out of available income or capital attributable to the *side pocket class*, depending on the normal charging policy set out in the *prospectus*.
- (2) Since it is not possible to know whether any income from *affected investments* will be receivable on an ongoing basis in future, the *authorised fund manager* will have to determine how to account for such income and for expenses attributable to the *side pocket class*. The *authorised fund manager* may decide to accrue such costs and charges indefinitely until sufficient cash is available to cover them, or to waive some charges or pay them from its own resources. The *governing body* of the *authorised fund manager* should consider this when evaluating whether to proceed with creating a *side pocket class*.
- (3) The *governing body* should also consider whether the *authorised fund manager* should be remunerated for managing a *class* that is valued largely or solely by reference to *affected investments*. To ensure fair treatment of all *unitholders* in the *fund*, it may be more appropriate for the *authorised fund manager* to forego some or all remuneration from the *side pocket class*.
- (4) An *authorised fund manager* may be able to charge a fee for managing the *side pocket class*, but the fee should fairly reflect the services provided and activities carried on by the *authorised fund manager* for *unitholders* in that *class*. The fee should not exceed what is reasonable to cover the necessary costs and charges of the *authorised fund manager* (including any *firm* which has been given the mandate to *manage investments* for the *scheme* under ■ COLL 6.6.15AR (Committees and delegation)) and to reward the amount of work entailed in seeking opportunities over time to dispose of the *affected investments* in an orderly way. The *FCA* would expect such a fee to be less than the *authorised fund manager's* charges for managing the rest of the *scheme property*.

Application of COLL 3 (Constitution)

7.8.10

R

The *rules* and *guidance* in ■ COLL 3 (Constitution) apply to an *authorised fund* with a *side pocket class* subject to the modifications specified in ■ COLL 7.8.11R.

7.8.11 **R** In ■ COLL 3.3.5R (Rights of unit classes), paragraphs (2) and (3) do not prohibit the *issue* of *units* in a *side pocket class*.

Application of COLL 4 (Investor relations): General

7.8.12 **R** The *rules* and *guidance* in ■ COLL 4 (Investor relations) apply to an *authorised fund* with a *side pocket class*, subject to:

- (1) the modifications in ■ COLL 7.8.13R to ■ COLL 7.8.21R; and
- (2) the additional requirements in ■ COLL 7.8.22R and ■ COLL 7.8.24R.

Modified application of COLL 4.2 (Pre-sale notifications)

7.8.13 **R** In relation to a *side pocket class*, the information required to be included in the *prospectus* under ■ COLL 4.2.5R (Table: contents of prospectus) must cover at least the additional matters set out in (1) to (4).

- (1) In ■ COLL 4.2.5R(5) (Characteristics of units):
 - (a) a general description of the *affected investments* to be allocated to the *side pocket class* (or *side pocket classes*);
 - (b) an explanation of how the *scheme property* (both *capital property* and *income property*) will be allocated between the *side pocket class* (or *side pocket classes*) and other *classes* at the outset and on an ongoing basis; and
 - (c) information which explains:
 - (i) that the *authorised fund manager* will seek to dispose of all the *affected investments* over time, on terms that it judges to be in the best interests of *unitholders*; and
 - (ii) that the *units* in the *side pocket class* (or *side pocket classes*) will be *cancelled* when this has been done, indicating where possible what options may be offered to *unitholders* for exiting the *side pocket class* (or *side pocket classes*) under the process.
- (2) In ■ COLL 4.2.5R(16) (Valuation and pricing of scheme property), the frequency at which:
 - (a) *affected investments* allocated to the *side pocket class* will be valued; and
 - (b) the *prices* of *units* in the *side pocket class* will be calculated, where these differ from other *classes* of the *scheme*.
- (3) In ■ COLL 4.2.5R(17) (Dealing):
 - (a) that the *issue* of *units* in the *side pocket class* is limited, and the circumstances and conditions for *issuing* them;
 - (b) a statement of when the *dealing days* for the *side pocket class* will be;
 - (c) details of any cut-off point for the receipt of *dealing* instructions prior to the *valuation point* for the relevant *dealing day*; and
 - (d) if applicable, details of:

- (i) any special arrangements put in place for *redemptions* of *units* in the *side pocket class*, including any extended time period for settlement and any facility to pay the proceeds of *redemption* to a *person* other than the *unitholder*;
- (ii) whether *redemption* proceeds can be reinvested in *units* of other *classes* of the *scheme* or in *units* of other *schemes*; and
- (iii) any facility for a *unitholder* to dispose of an interest in *units* by transferring title to them to another *person* (other than by operation of law), as a donation or for financial consideration.

(4) In ■ COLL 4.2.5R(27)(b) (Additional information):

- (a) an explanation that there is no certainty that any *affected investment* will ever recover its value to a significant extent, or at all, and that the *authorised fund manager* may be unable to realise any material value for *unitholders* in respect of *units* held in the *side pocket class*;
- (b) if applicable, that the costs and charges for operating the *side pocket class* may significantly erode the returns from any realisable value from the *affected investments* over time; and
- (c) whether the *authorised fund manager* has undertaken to bear all the costs and charges associated with operating the *side pocket class* from its own resources and, if not, a statement explaining:
 - (i) the risk that costs and charges might cause the cash position of the *side pocket class* to become overdrawn;
 - (ii) that a liability arising as a result of (i) would be accounted for against the *scheme property* allocated to the other *classes* in the *scheme*; and
 - (iii) the steps the *authorised fund manager* would take to ensure *unitholders* in other *classes* do not bear such a liability.

Modified application of COLL 4.3 (Approvals and notifications)

- 7.8.14 **R** The *authorised fund manager* need not treat the creation of a *side pocket class* as a fundamental change for the purposes of ■ COLL 4.3.4R (Fundamental change requiring prior approval by meeting) provided the *authorised fund manager* is satisfied on reasonable grounds that the foreseeable costs of this course of action are not disproportionate to the benefits.
- 7.8.15 **G** The *guidance* in ■ COLL 4.3.5G (Guidance on fundamental change) should be read in accordance with the modification in ■ COLL 7.8.14R.
- 7.8.16 **R** If the *authorised fund manager* considers that the creation of a *side pocket class* constitutes a significant change, the *authorised fund manager*:
- (1) may, but need not, give prior written notice to *unitholders* under ■ COLL 4.3.6R(1) (Significant change requiring pre-event notification); and
 - (2) is not required to comply with ■ COLL 4.3.6R(3).

7.8.17 **G** The *guidance* in ■ COLL 4.3.7G (Guidance on significant changes) should be read in accordance with the modification in ■ COLL 7.8.16R.

7.8.18 **G** Before announcing its intention to create a *side pocket class*, the *authorised fund manager* should have regard to the reasonable operational needs of *intermediate unitholders* and any reasonable periods of time they will need to establish processes and procedures and communicate information to those *clients* for whom the *intermediate unitholder* acts as a nominee in relation to *units* in the *scheme*.

Modified application of COLL 4.4 (Meetings of unitholders and service of notices)

7.8.19 **R**

- (1) ■ COLL 4.4.8R (Voting rights) applies to an *authorised fund* with a *side pocket class* with the modifications set out in (2) and (3) below.
- (2) Before a resolution is put to a vote at a *unitholder* meeting, it must be made clear whether the resolution relates to or affects:
 - (a) all the *classes of unit* in the *authorised fund*;
 - (b) those *classes of unit* in the *authorised fund* excluding the *side pocket class*; or
 - (c) only the *side pocket class*.
- (3) On a poll, the votes of a *unitholder* may only be counted to the extent that the *unitholder's* voting rights are attached to *units* in the *class* or *classes* to which the resolution relates or which the resolution affects in accordance with (2).

7.8.20 **G**

- (1) The *authorised fund manager* will need to ensure that the *instrument constituting the fund* and the *prospectus* reflect the modified application of ■ COLL 4.4.8R as set out in ■ COLL 7.8.19R.
- (2) ■ COLL 7.8.19R modifies the application of ■ COLL 4.4.8R but does not affect the other matters dealt with in ■ COLL 4.4, such as ■ COLL 4.4.6R (Quorum).

Modified application of COLL 4.7 (Key investor information and marketing communications)

7.8.21 **R** The *rules* in ■ COLL 4.7.2R (Key investor information) do not require an *authorised fund manager* to draw up a *key investor information document* or a *NURS-KII document* in relation to a *side pocket class*.

Additional information for unitholders on the creation of a side pocket class

7.8.22 **R** The *authorised fund manager* must provide a written notification to *unitholders* which meets the requirements of (1) to (3).

- (1) The notification must be provided to *unitholders* in a timely way, either shortly before the *side pocket class* is created or as soon as practicable afterwards.

- (2) If the *unitholder* has a financial adviser, the requirement to provide the notification in (1) may be satisfied by sending it to the financial adviser.
- (3) The notification must explain in a comprehensive manner:
 - the reasons for the *authorised fund manager's* decision to create a *side pocket class*, including the expected benefits and the costs and charges;
 - the effect on *unitholders'* ability to exercise their rights;
 - if applicable, the basis on which the *authorised fund manager* has satisfied itself as to the cost impact of its decision under ■ COLL 7.8.14R;
 - a description of the main features of the *side pocket class*;
 - practical information that *unitholders* will need to understand about the changes to their investment in the *authorised fund*;
 - and
 - each of the matters specified in ■ COLL 7.8.13R(4) (Modified application of COLL 4.2 (Pre-sale notifications)).
- (4) The notification must:
 - (a) be written in clear and plain language;
 - (b) be provided in a *durable medium*; and
 - (c) be accessible by existing and prospective *unitholders* (e.g. by publishing a copy in a prominent location on the *authorised fund manager's* website).

7.8.23

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- (1) In relation to ■ COLL 7.8.22R(3)(a), the information in the notification should include:
 - (a) a description of the *scheme's* exposure to *affected investments* and the *authorised fund manager's* approach to valuing them;
 - (b) an explanation of the risks such *affected investments* pose to the *scheme* and its *unitholders*, and the *authorised fund manager's* policies for mitigating those risks;
 - (c) a description of what measures the *authorised fund manager* is taking as a result of those risks, and in relation to which *affected investments*;
 - (d) either a detailed list of the *affected investments* or a link to a place where they are (or will be) set out, making clear (if applicable) which *affected investments* are not subject to any of the measures referred to in (c); and
 - (e) an explanation of the costs and charges to be borne by *unitholders* in the new *classes*, and of any resulting change in the costs and charges borne by existing *classes*.
- (2) In relation to ■ COLL 7.8.22R(3)(d), the information in the notification should include:
 - (a) the name of each *side pocket class* and a description of how the rights of a *unitholder* differ from the rights attached to existing *classes* and any other new *classes*;

- (b) any alteration in the rights attached to an existing *class* (e.g. that it will be valued without reference to *affected investments*);
 - (c) the terms on which new *units* are *issued* to existing *unitholders*, i.e. whether *units* in a new *class* are *issued* in addition to *units* in an existing *class*, or by way of conversion into *units* in one or more new *classes*;
 - (d) the terms on which *units* are *issued* to both existing and new *unitholders*; and
 - (e) the date on which the changes take effect.
- (3) In relation to ■ COLL 7.8.22R(3)(e), the information in the notification should include:
- (a) an explanation of the *dealing* arrangements for *redemptions*, including the *dealing days*;
 - (b) if applicable, that *dealing* in *units* in the *side pocket class* has been suspended (see also ■ COLL 7.2.1R(2A), ■ (2B) and ■ (2C) (Requirement));
 - (c) when and how *redemption* proceeds will be paid, including any alternative arrangements for payment;
 - (d) the circumstances in which *unitholders* may convert their *units* in a *side pocket class* to *units* of another *class* of the *scheme*; and
 - (e) the circumstances in which *unitholders* may transfer title to their *units* in the *class* to another *person*.

7.8.24 **R** The *authorised fund manager* must, as soon as reasonably practicable after the date on which the *side pocket class* is created, send a written statement to each *unitholder* confirming the number and type of *units* of each *class* the *unitholder* holds in the *authorised fund* as a result of the creation of the *side pocket class*.

7.8.25 **G** The notification required by ■ COLL 7.8.22R and the written statement of holdings required by ■ COLL 7.8.24R may be issued to existing *unitholders* in a single combined communication. However, it will not be possible to use a single combined communication where the notification required by ■ COLL 7.8.22R is provided to a *unitholder's* financial adviser instead of the *unitholder* (see ■ COLL 7.8.22R(2)).

Side pockets: modified application of COLL 5 (Investment and borrowing powers)

- 7.8.26** **R**
- (1) ■ COLL 5 (Investment and borrowing powers) applies to the *side pocket property*, subject to the modifications in this *rule*.
 - (2) Subject to (4) to (6), in the case of a *UCITS scheme*, the *authorised fund manager* must comply with as much of ■ COLL 5.1 (Introduction), ■ COLL 5.2 (General investment powers and limits for UCITS schemes) and ■ COLL 5.3 (Derivative exposure) as is practicable having regard to the limited purpose for which the *side pocket class* was created.
 - (3) Subject to (4) to (6), in the case of a *non-UCITS retail scheme*, the *authorised fund manager* must comply with as much of ■ COLL 5.1

(Introduction) and ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) as is practicable having regard to the limited purpose for which the *side pocket class* was created.

- (4) The *authorised fund manager* may only enter into a *derivative* or a forward transaction which:
 - (a) is a 'class hedging transaction' within the meaning of ■ COLL 3.3.5R(4)(d); and
 - (b) falls within ■ COLL 3.3.5AR (Hedging of unit classes) (see also ■ COLL 3.3.5BG (Guidance on hedging of unit classes)), and all provisions of ■ COLL 5 relevant to such transactions apply.
- (5) ■ COLL 5.5.3R (Cash and near cash) applies, except that references to the 'investment objectives' of the *scheme* should be read as references to the objective in ■ COLL 7.8.33R(2)(b) (Modified application of COLL 6.6 (Operating duties and responsibilities)).
- (6) The following rules apply:
 - (a) ■ COLL 5.5.4R (General power to borrow);
 - (b) ■ COLL 5.5.5R (Borrowing limits);
 - (c) ■ COLL 5.5.6R (Restrictions on lending of money);
 - (d) ■ COLL 5.5.7R (Restrictions on lending of property other than money);
 - (e) ■ COLL 5.5.8R (General power to accept or underwrite placings); and
 - (f) ■ COLL 5.5.9R (Guarantees and indemnities).

Side pockets: guidance on modified application of COLL 5

7.8.27

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- (1) The nature of a *side pocket class* means that the *authorised fund manager* cannot apply the same risk controls to *affected investments* that would apply to the rest of the *scheme property*. In the FCA's view, it would not be practicable for the *authorised fund manager* to apply a prudent spread of risk to the *affected investments* or to comply in full with the specific eligibility and risk-spreading limits set out in ■ COLL 5 for *transferable securities*, money-market instruments and *units* in *collective investment schemes*.
- (2) However, the modification of the rules provided in ■ COLL 7.8.26R(2) and ■ (3) is to be interpreted narrowly and only to the extent necessary to allow the *authorised fund manager* to manage the risks of the *affected investments* allocated to the *side pocket class* and to *deal* efficiently with them. In particular, the modifications in those *rules* do not permit an *authorised fund manager* to take any action that increases the risk profile of the *scheme* as a whole, such as acquiring property or entering into transactions that would not be permitted by the unmodified *rules* of ■ COLL 5.

COLL 5 references to ‘scheme property’ in relation to other parts of the scheme

7.8.28

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- (1) This *rule* applies to the *authorised fund manager* and *depository* of an *authorised fund* with a *side pocket class*.
- (2) For the purpose of interpreting references to the ‘scheme property’ in ■ COLL 5 in relation to the part of the *scheme* which is not a ‘side pocket’, the *authorised fund manager* and *depository* may disregard the *side pocket property*.
- (3) The reference to a ‘side pocket’ in (2) is a reference to a part of the *scheme* which is represented by *units* in a *side pocket class*.

**Application of COLL 6 (Operating duties and responsibilities):
General**

7.8.29

R

The *rules* and *guidance* in ■ COLL 6 (Operating duties and responsibilities) apply in relation to an *authorised fund* with a *side pocket class* subject to the modifications specified in ■ COLL 7.8.30R (Modified application of COLL 6.2 (Dealing)) to ■ COLL 7.8.36R (Modified application of COLL 6.7 (Payments)).

Modified application of COLL 6.2 (Dealing)

7.8.30

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- (1) ■ COLL 6.2 (Dealing) applies to a *side pocket class* subject to the modifications specified in this *rule*.
- (2) For the purposes of ■ COLL 6.2.8R (Issue and cancellation of units through an authorised fund manager), if the *authorised fund manager* redeems a *unit* in a *side pocket class* from a *unitholder*, the *authorised fund manager* must immediately *cancel* the *unit* or, in relation to an *AUT* or *ACS*, instruct the *depository* to do so.
- (3)
 - (a) Subject to (b) and (c), the requirement in ■ COLL 6.2.13R (Payment for units issued) may be satisfied by the *authorised fund manager* allocating such proportion of the *scheme property* to that *class* as the *authorised fund manager* may determine.
 - (b) Before making the allocation of *scheme property* in (a), the *authorised fund manager* must consult the *depository* and take its views into account.
 - (c) After being consulted under (b), the *depository* must consider the proposed allocation of the *scheme property* and inform the *authorised fund manager* if it considers that the allocation is not appropriate, having regard to the purpose of the *side pocket class*.
- (4) In ■ COLL 6.2.16R (Sale and redemption), in relation to the *redemption* of *units* in a *side pocket class*:
 - (a) paragraphs (4) and (5) apply unless the *prospectus* makes alternative provision for how *unitholders* may be paid; and
 - (b) paragraphs (5A), (6) and (7) do not apply.
- (5) The *authorised fund manager* must apply ■ COLL 6.2.18R (Limited issue) as follows:

- (a) ■ COLL 6.2.18R(1) applies to the *issue of units* in a *side pocket class*;
- (b) ■ COLL 6.2.18R(2) does not apply to a *side pocket class*, and the *authorised fund manager* must not provide for the further *issue of units* in the same *class*; and
- (c) ■ COLL 6.2.18R(3) applies where a *scheme* has a *side pocket class*.

Modified application of COLL 6.3 (Valuation and pricing)

7.8.31

R

- (1) ■ COLL 6.3 (Valuation and pricing) applies in relation to a *side pocket class* subject to the modifications specified in this *rule* (see also ■ COLL 7.8.32G).
- (2) For the purpose of ■ COLL 6.3.5R (Price of a unit), the *authorised fund manager* must ensure that the price of a *unit* in a *side pocket class* is calculated:
 - (a) by reference to the net value of the *side pocket property*; and
 - (b) in accordance with the provisions of both the *instrument constituting the fund* and the *prospectus*.
- (3) Notwithstanding ■ COLL 6.3.11R (Publication of prices), the *authorised fund manager* must make public in an appropriate manner the *price of a unit* in the *side pocket class* after every *valuation point* (see ■ COLL 6.3.4R (Valuation points)), even if the *authorised fund manager* is not holding itself out to *deal* in such *units* at that *valuation point*.

7.8.32

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The *guidance* in ■ COLL 6.3.12G(1)(a) to ■ (c) is unlikely to be relevant to an *authorised fund manager* when publishing the *price of a unit* in a *side pocket class* in accordance with the *rules* in this section.

Modified application of COLL 6.6 (Operating duties and responsibilities)

7.8.33

R

- (1) ■ COLL 6.6 (Operating duties and responsibilities) applies to the *authorised fund manager* and *depository* of an *authorised fund* with a *side pocket class*, subject to the modifications specified in this *rule* and ■ COLL 7.8.34R (Modified application of the assessment of value rules).
- (2) For the purposes of ■ COLL 6.6.3R(3)(a) (Functions of the authorised fund manager), the *authorised fund manager* must make decisions as to the constituents of the *scheme property*:
 - (a) in accordance with the investment objectives and policy of the *scheme*, but may disregard any *affected investment* in the *side pocket property*; and
 - (b) with a view to disposing of those *affected investments* over time as and when the *authorised fund manager* considers this can be done in the best interests of *unitholders*.
- (3) For the purposes of ■ COLL 6.6.4R(1) (General duties of the depository), the *depository* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with the matters specified in ■ COLL 6.6.4R(1)(a) to ■ (e) as modified by the *rules* in this section, and ■ COLL 6.6.4R(2) is to be read accordingly.

- (4) (a) The duty in ■ COLL 6.6.14R(2) (Duties of the depositary and the authorised fund manager: investment and borrowing powers) requiring the *authorised fund manager* to rectify at its own expense a breach of ■ COLL 5 (Investment and borrowing powers), or any provision of the *instrument constituting the fund* or the *prospectus*, does not apply to the extent that:
- (i) the breach relates to *affected investments* in the *side pocket property*; and
 - (ii) the *depositary* is satisfied that it is not practicable for the *authorised fund manager* to comply with the relevant *rule* in ■ COLL 5, the provision of the *instrument constituting the fund* or the *prospectus*.
- (b) ■ COLL 6.6.14R(4), ■ (5) and ■ (6) do not apply to the extent that the breach falls within (a) above.

Modified application of the assessment of value rules

7.8.34

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When conducting an assessment of value for the purposes of ■ COLL 6.6.20R (Assessment of value) in relation to a *scheme* that has a *side pocket class*, the *authorised fund manager*:

- (1) must consider each of the matters included in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value) in relation to the *scheme* as a whole, including the *side pocket class*, but may adopt a proportionate approach to the assessment as it applies specifically to the *side pocket class*;
- (2) in relation to the *side pocket class*, need not consider a matter included in ■ COLL 6.6.21R if, in all the circumstances, it is not relevant to that *class*;
- (3) must consider whether, to the extent that payments are being made out of the *scheme property* attributable to the *side pocket class* or are being accrued for that purpose, those payments:
 - (a) are justified in terms of the value delivered to *unitholders* in the *side pocket class*; and
 - (b) are not prejudicial to the interests of *unitholders* of other *classes*; and
- (4) must consider whether it remains in *unitholders'* best interests for the *side pocket class* to continue in operation.

7.8.35

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- (1) In relation to ■ COLL 7.8.34R(1), the *authorised fund manager* should consider the *side pocket class* when carrying out an assessment of value for a *scheme*. A *side pocket class*, because of its special purpose, might in isolation represent poor value according to the standard criteria for assessment, so the *authorised fund manager* should take account of that purpose in order to reach a proportionate assessment. However, where payments are being taken out of the *side pocket property*, the assessment of overall value delivered to *unitholders* in the *scheme* should give due weight to the impact of those payments.
- (2) In relation to ■ COLL 7.8.34R(3)(a), the *authorised fund manager* should consider whether the payments out of *scheme property* can be

justified when compared with the value it reasonably expects that *unitholders* might receive from any eventual disposal of the *affected investments*, taking into account current market conditions and relevant political and economic developments.

- (3) In relation to ■ COLL 7.8.34R(3)(b), it is likely to be unfair or prejudicial to *unitholders'* best interests for costs and charges borne by the side pocket class to be attributable to *unitholders* in other *classes*.

Modified application of COLL 6.7 (Payments)

7.8.36

R

- (1) ■ COLL 6.7 (Payments) applies in relation to an *authorised fund* with a *side pocket class* subject to the modifications and additional requirements specified in this *rule*.
- (2) The *authorised fund manager* must not impose any of the following charges or levies on *unitholders* of the *side pocket class*:
- (a) a preliminary charge or levy when the *units* in the *side pocket class* are *issued*;
 - (b) a charge or levy on the *redemption* or *cancellation* of *units*;
 - (c) a performance-related management fee.
- (3) The *authorised fund manager* must prevent undue costs being charged to the *scheme* and its *unitholders*.

[**Note:** In relation to (3), see also ■ COLL 6.6A.2R(5) (Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholders) and article 17 of the *AIFMD level 2 regulation* (Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market).]

Application of COLL 7.2 (Suspension and restart of dealings)

7.8.37

R

- (1) ■ COLL 7.2 (Suspension and restart of dealings) applies in relation to a *side pocket class* subject to the modifications specified in this *rule*.
- (2) The *authorised fund manager* may suspend *dealings* in *units* of a *side pocket class*, while continuing to *deal* in other *classes* of the *scheme*.
- (3) If the *authorised fund manager* suspends *dealings* in accordance with (1), it is not required to carry out any request by a *unitholder* to convert *units* in the suspended *side pocket class* into units of another *class* in which *dealing* continues.
- (4) ■ COLL 7.2.1R applies to the suspension of *dealings* in *units* of a *side pocket class* under (2).

**Matters to be considered by the authorised fund manager before
creating a side pocket class**

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

- | | |
|-----------|---|
| 1. | Investment risk considerations |
| (1) | Whether there is agreement on which <i>affected investments</i> should be allocated to a <i>side pocket class</i> . |
| (2) | The possible impact of relevant sanctions regimes. |
| (3) | The <i>authorised fund manager's</i> estimate of the likelihood of the <i>affected investments</i> achieving a realisable value within a range of timeframes. |
| (4) | Whether the <i>authorised fund manager</i> intends to invest in <i>affected countries</i> if the economic situation stabilises and relevant sanctions regimes allow it and, if so, how that might affect <i>unitholders</i> in the <i>side pocket class</i> . |
| (5) | Whether the <i>authorised fund manager's</i> risk management function (see COLL 6.11 (Risk control and internal reporting)) has assessed the likely consequences for the <i>authorised fund manager</i> , the <i>authorised fund</i> and its <i>unitholders</i> if the <i>authorised fund manager</i> were to take no action to set up a <i>side pocket class</i> . |
| (6) | That there is a risk management plan which considers different scenarios for what might happen to the <i>affected investments</i> allocated to the <i>side pocket class</i> and how such scenarios would be dealt with. |
| 2. | Costs |
| (1) | The <i>authorised fund manager's</i> estimated one-off costs of establishing the <i>side pocket class</i> and whether these costs will be met by the <i>authorised fund manager</i> , or paid from the <i>scheme property</i> of the <i>authorised fund</i> , or apportioned between both. |
| (2) | The <i>authorised fund manager's</i> estimated ongoing annual costs of operating the <i>side pocket class</i> , and the provision being made to pay these costs: |
| (a) | over various scenarios as to the duration of the <i>class</i> ; and |
| (b) | (to the extent they differ) in relation to the scenarios considered by |

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

the risk management plan in paragraph 1(6) above.

- (3) Whether the *authorised fund manager* will take a fee for managing the *side pocket class* and, if so, what factors have been considered to determine whether it is set at a fair level and to prevent *unitholders* from being charged undue costs.
- (4) How the total costs, borne by a *unitholder* holding *units* in both the *side pocket class* and a *class* relating to unaffected *investments*, will compare to the total cost that the *unitholder* currently bears.
- (5) If the future total cost for *unitholders* is expected to be higher than the current cost, how this will be justified to *unitholders* against the uncertain benefit of a future realisation of value in the *side pocket class*.

3. Legal and operational considerations

- (1) The *authorised fund manager's* legal advice on the implications of setting up a *side pocket class*, having regard to s235(4) and, in the case of an *ICVC*, s236(3) of the *Act* (see the guidance in COLL 7.8.7G).
- (2) Whether the *authorised fund's* auditor has been consulted and its view taken into account.
- (3) Whether the *authorised fund manager* is satisfied that all operational functions for which it is responsible, including fund accounting and transfer agency functions, are able to fully support the *side pocket class*.
- (4) The *authorised fund manager's* assessment of the readiness of *firms* to implement and maintain arrangements for the *side pocket class* to operate effectively, such as those that *arrange* or *deal* in *units* in the *authorised fund*, providers of *SIPPs* and providers of *linked funds*.

4. Longer-term investor considerations

- (1) The *authorised fund manager's* policy for allowing *unitholders* to exit the *class* during its lifetime.
- (2) The *authorised fund manager's* view of the likely future options for enabling the *side pocket class* to be terminated.

5. Overall assessment

Whether the *governing body* of the *authorised fund manager* is satisfied that:

- (1) the potential benefits to *unitholders* of *units* in any *side pocket class* are proportionate to the estimated costs of establishing and running the *class*, including over the long term;

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

- (2) proceeding to set up the *side pocket class* will be in the best interests of the *authorised fund* and its *unitholders*; and
- (3) the *depository* has been properly consulted and its view taken into account.

Chapter 8

Qualified investor schemes

8.1 Introduction

Application

8.1.1

R

- (1) This chapter applies to:
 - (a) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
 - (b) any other *director* of an *ICVC*;
 - (c) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
 - (d) an *ICVC*,
 which is a *qualified investor scheme*.
- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *qualified investor schemes*.

Purpose

8.1.2

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- (1) This chapter assists in achieving the *statutory objective* of protecting *consumers* by providing an appropriate degree of protection in respect of *authorised funds* that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in *retail schemes*.
- (2) This section ceases to apply where a *qualified investor scheme* has converted to be authorised as a *UCITS scheme* or a *non-UCITS retail scheme*.

Qualified investor schemes: eligible investors

8.1.3

R

- (1) Subject to (3), the *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted under ■ COBS 4.12B.7R.
- (2) The *authorised fund manager* will be regarded as complying with (1) and (3) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.
- (3) In addition to (1), the *authorised contractual scheme manager* of a *qualified investor scheme* which is an *ACS* must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that meets the criteria set out in ■ COLL 8 Annex 2 R (ACS Qualified Investor Schemes: eligible investors).

Qualified investor schemes - explanation

8.1.4

G

(1) *Qualified investor schemes* are authorised funds which are intended only for *professional clients* and for *retail clients* who are sophisticated investors. For this reason, *qualified investor schemes* are subject to a restriction on promotion under ■ COBS 4.12B.6R. See also ■ COBS 4.12B.47G.

(1A) The *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to a *person* to whom such *units* may be promoted under ■ COBS 4.12B.7R and who also meets the criteria in ■ COLL 8 Annex 2.

(2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for *retail schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

Application and notification procedures

8.1.5

G

Details of the application procedures in respect of *qualified investor schemes* are contained in ■ COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the FCA.

8.2 Constitution

Application

- 8.2.1 **R** This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

Classes of unit

- 8.2.2 **R** A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

Names of schemes, sub-funds, and classes of units

- 8.2.3 **R**
- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
 - (2) Paragraph (3) applies to an *authorised fund manager* of a *qualified investor scheme*, an *ICVC* which is such a *scheme*, and any other *directors* of such an *ICVC*.
 - (3) The *scheme* or *sub-fund*:
 - (a) must not use 'Long-Term Asset Fund' or 'LTAF' in its name; and
 - (b) must not otherwise suggest through its name that it is a *fund* which invests in long-term assets or describe itself as such.

Undesirable and misleading names

- 8.2.4 **G**
- (1) ■ COLL 6.9.6G (Undesirable and misleading names) contains *guidance* as to names which may be undesirable or misleading.
 - (2) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for *long-term asset funds* (see ■ COLL 15).
 - (3) [deleted]

Instrument constituting the fund

- 8.2.5 **R** The statements and provisions required by ■ COLL 8.2.6 R must be included in the *instrument constituting the fund* of a *qualified investor scheme*.

Table: contents of the instrument constituting the fund

8.2.6

R

This table belongs to ■ COLL 8.2.5 R

1	<p>Description of the authorised fund</p> <p>Information detailing:</p> <ol style="list-style-type: none"> (1) the name of the <i>authorised fund</i>; (2) that the <i>authorised fund</i> is a <i>qualified investor scheme</i>; and (3) in the case of an <i>ICVC</i>, whether the head office of the <i>company</i> is situated in England and Wales or Wales or Scotland or Northern Ireland. <p>Property Authorised Investment Funds</p> <p>1A For a <i>property authorised investment fund</i>, a statement that:</p> <ol style="list-style-type: none"> (1) it is a <i>property authorised investment fund</i>; (2) no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and (3) in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> in accordance with 6A if the <i>authorised fund manager</i> reasonably considers such action to be: <ol style="list-style-type: none"> (a) necessary in order to enable an orderly reduction of the holding to below 10%; and (b) in the interests of the <i>unitholders</i> as a whole.
2	<p>Constitution</p> <p>The following statements:</p> <ol style="list-style-type: none"> (1) the <i>scheme property</i> of the <i>scheme</i> is entrusted to a <i>depository</i> for safekeeping (subject to any exception permitted by the <i>rules</i>); (2) if relevant, the duration of the <i>scheme</i> is limited and, if so, for how long; (3) charges and expenses of the <i>scheme</i> may be taken out of <i>scheme property</i>; (4) for an <i>ICVC</i>: <ol style="list-style-type: none"> (a) what the maximum and minimum sizes of the <i>scheme's</i> capital are; and (b) the <i>unitholders</i> are not liable for the debts of the <i>company</i>; (4A) for an <i>ICVC</i> which is an <i>umbrella</i>, a statement that the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose; (4B) for a <i>co-ownership scheme</i> which is an <i>umbrella</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>;

- (4C) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;
- (5) for an *AUT*:
 - (a) the *trust deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
 - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
 - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
 - (i) the *scheme* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);
 - (c) a *Unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and
 - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (6) for an *ACS*:
 - (a) the *contractual scheme deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions;
 - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
 - (iv) states that *units* may not be *issued* to a *person* other than a *person*:
 - (A) who is a:
 - (i) *professional ACS investor*;
 - (ii) *large ACS investor*; or

- (iii) *person* who already holds *units* in the *scheme*; and
- (B) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R;
- (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
- (vi) states that for a *co-ownership scheme*:
 - (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
 - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
 - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*;
- (vii) states:
 - (A) whether the transfer of *units* in the *ACS* scheme or, for a *co-ownership scheme* which is an *umbrella (sub-funds* of which pursue differing policies in relation to transfer of *units*), in each particular *sub-fund*, is either:
 - (i) prohibited; or
 - (ii) allowed;
 - (B) where transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
 - (i) who is a:
 - (1) *professional ACS investor*; or
 - (2) *large ACS investor*; or
 - (3) *person* who already holds *units* in the *scheme*; and

- (ii) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R; and
 - (viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;
- (b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the Act (Contractual scheme rules) and for the time being in force:
 - (i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 8.5.15 R(Income); and
- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by FCA rules does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
 - (i) acquire, manage and dispose of the *scheme property*; and
 - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

3 Investment objectives

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

4	<p>Units in the scheme</p> <p>A statement of:</p> <ol style="list-style-type: none"> (1) the <i>classes of units</i> which the <i>scheme</i> may issue, indicating, for a <i>scheme</i> which is an <i>umbrella</i>, which <i>class</i> or <i>classes</i> may be issued in respect of each <i>sub-fund</i>; and (2) the rights attaching to <i>units</i> of each <i>class</i> (including any provisions for the expression in two denominations of such rights).
5	<p>Limitation on issue of and redemption of units</p> <p>Details as to:</p> <ol style="list-style-type: none"> (1) the provisions relating to any restrictions on the right to redeem <i>units</i> in any <i>class</i>; and (2) the circumstances in which the issue of the <i>units</i> of any particular <i>class</i> may be limited.
6	<p>Income and distribution</p> <p>Details of the <i>person</i> responsible for the calculation, transfer, allocation and distribution of income for any <i>class</i> of <i>unit</i> in <i>issue</i> during the accounting period.</p> <p>Redemption or cancellation of units on breach of law or rules</p>
6A	<p>A statement that where any holding of <i>units</i> by a <i>unitholder</i> is (or is reasonably considered by the <i>authorised fund manager</i> to be) an infringement of any law, governmental regulation or rule, those <i>units</i> must be redeemed or cancelled.</p>
7	<p>Base currency</p> <p>A statement of the <i>base currency</i> of the <i>scheme</i>.</p>
8	<p>Meetings</p> <p>Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for <i>unitholders</i>.</p>
9	<p>Powers and duties of the authorised fund manager and depositary</p> <p>Where relevant, details of any function to be undertaken by the <i>authorised fund manager</i> and <i>depositary</i> which the <i>rules</i> in <i>COLL</i> require to be stated in the <i>instrument constituting the fund</i>.</p>
10	<p>Termination and suspension</p> <p>Details of:</p> <ol style="list-style-type: none"> (1) the grounds under which the <i>authorised fund manager</i> may initiate a suspension of the <i>scheme</i> and any associated procedures; and (2) the methodology for determining the rights of <i>unitholders</i> to participate in the <i>scheme property</i> on winding up.
10A	<p>Investment in overseas property through an intermediate holding vehicle</p> <p>If investment in an overseas immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of overseas immovables by the <i>scheme</i>.</p>
11	<p>Other relevant matters</p> <p>Details of those matters which enable the <i>scheme</i>, <i>authorised fund manager</i> or <i>depositary</i> to obtain any privilege or power conferred</p>

by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

Limited issue

8.2.7

R

Units whose issue may be limited can only be issued if permitted by the instrument constituting the fund, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.



8.3 Investor relations

Application

- 8.3.1 **R** This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* of a *qualified investor scheme*.

Drawing up and availability of a prospectus

- 8.3.2 **R**
- (1) An *authorised fund manager* must ensure that a *prospectus* of a *qualified investor scheme* is drawn up which contains the information, specified in ■ COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the *authorised fund manager* must:
 - (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
 - (b) include the date of any revision in a prominent manner in the revised *prospectus*;
 - (c) send a copy of the original and any revised *prospectus* to the *FSA*; and
 - (d) review the *prospectus* periodically and revise it to take account of any significant change or new matter.
 - (1A) A *full-scope UK AIFM* that is the *authorised fund manager* of a *qualified investor scheme* must also ensure that the *prospectus* contains the information for investors required by:
 - (i) ■ FUND 3.2.2R and ■ FUND 3.2.3R (Prior disclosure of information to investors); and
 - (ii) ■ FUND 3.2.5R and ■ FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the *scheme's* most recent annual report or half-yearly report.
 - (2) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
 - (3) An *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *qualified investor scheme* prior to the purchase of any *units*.
- 8.3.2A **G**
- (1) The *PRIPs Regulation* requires the manufacturer of a *PRIP* to draw up a *key information document* in accordance with the *PRIPs*

Regulation before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).

- (2) The requirements of the *PRIIPs Regulation* form part of *UK* law.
- (3) As a result, when a *qualified investor scheme* is made available to *retail clients* the *authorised fund manager* will need to prepare a *key information document* in accordance with the *PRIIPs Regulation*, in addition to the *prospectus*.

False or misleading prospectus

8.3.3

R

The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

Table: contents of qualified investor scheme prospectus

8.3.4

R

This table belongs to ■ COLL 8.3.2 R.

1	<p>Document status</p> <p>A statement that this document is the <i>prospectus</i> of the <i>authorised fund</i> valid as at a particular date which shall be the date of the <i>document</i>.</p>
2	<p>Description of the authorised fund</p> <p>Information detailing:</p> <ul style="list-style-type: none"> (1) the name of the <i>authorised fund</i>; (1A) its <i>FCA</i> product reference number (PRN); (2) that the <i>authorised fund</i> is either an <i>ICVC</i>, <i>ACS</i> or an <i>AUT</i>; (3) that the <i>scheme</i> is a <i>qualified investor scheme</i>; (4) where relevant, that the <i>unitholders</i> in an <i>ICVC</i> are not liable for the debts of the <i>authorised fund</i>; (5) where relevant, the address of the <i>ICVC</i>'s head office and the address in the <i>United Kingdom</i> for service on the <i>ICVC</i> of documents required or authorised to be served on it; (6) the effective date of the <i>authorisation order</i> made by the <i>FCA</i> and, if the duration of the <i>authorised fund</i> is not unlimited, when it will or may terminate; (7) the <i>base currency</i> for the <i>authorised fund</i>; (8) where relevant, the maximum and minimum sizes of the <i>ICVC</i>'s capital; (9) the circumstances in which the <i>authorised fund</i> may be wound up under the <i>rules</i> in <i>COLL</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up; and (10) for an <i>ACS</i> that is a <i>limited partnership scheme</i>, the address of the proposed principal place of business of the <i>limited partnership scheme</i>.
3	<p>Investment objectives and policy</p> <ul style="list-style-type: none"> (1) Sufficient information to enable a <i>unitholder</i> to ascertain:

- (a) the investment objectives of the *authorised fund*;
 - (b) the *authorised fund's* investment policy for achieving those investment objectives, including:
 - (i) the general nature of the portfolio and any intended specialisation;
 - (ii) the policy for the spreading of risk in the *scheme property*; and
 - (iii) the policy in relation to the exercise of borrowing powers;
 - (c) a description of any restrictions in the assets in which investment may be made; and
 - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) For investment in immovables :
- (a) the countries or territories of immovables in which the *authorised fund* may invest;
 - (b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
 - (c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.
- (3) If intended, whether the *scheme property* may consist of *units in collective investment schemes* ("second schemes") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as:
- (a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and
 - (b) the extent to which any such charges will be reimbursed to the *scheme*.
- (4) If intended, whether the *scheme* may enter into *stock lending* transactions and, if so, what procedures will operate and what *collateral* will be required.
- (5) Where a *scheme* is a *feeder scheme* which (in respect of investment in *units* in a single *collective investment scheme*) is *dedicated* to *units* in a *collective investment scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the feeder *scheme* may make in it;
- 4 Distributions and accounting dates**
- Relevant details of accounting and distribution dates and a description of the procedures:
- (1) for determining and applying income (including how any distributable income is paid); and
 - (2) relating to unclaimed distributions.
- 5 The characteristics of units in the authorised fund**
- Information as to:

- (1) the names of the *classes of units* in issue or available for *issue* and the rights attached to them in so far as they vary from the rights attached to other *classes*;
- (2) how *unitholders* may exercise their voting rights and what these are; and
- (3) the circumstances where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required.

5A Issue of units in ACSs: eligible investors

- (1) A statement that *units* may not be *issued* to a *person* other than to a *person* :
 - (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R.
- (2) A statement that the *authorised contractual scheme manager* of an ACS must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

5B Transfer of units in ACSs

- (1) A statement whether the transfer of *units* in the ACS *scheme* is either:
 - (a) prohibited; or
 - (b) allowed;
 by the *instrument constituting the fund* and prospectus.
- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund* and prospectus in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
 - (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R.
- (3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds*

	have differing policies in relation to transfer of <i>units</i> , separate statements are required.
6	<p>The authorised fund manager</p> <p>The following particulars of the <i>authorised fund manager</i>:</p> <ol style="list-style-type: none"> (1) its name and the nature of its corporate form; (2) the country or territory of its incorporation; (3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease; (4) if it is a <i>subsidiary</i>, the name of its ultimate <i>holding company</i> and the country or territory in which that <i>holding company</i> is incorporated; (5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the <i>United Kingdom</i>; (6) the amount of its issued share capital and how much of it is paid up; (7) for an <i>ICVC</i>, a summary of the material provisions of the contract between the <i>ICVC</i> and the <i>authorised fund manager</i> which may be relevant to <i>unitholders</i> including provisions (if any) relating to termination, compensation on termination and indemnity; and (8) for an <i>AUT</i>, the names of the <i>directors</i> of the <i>authorised fund manager</i>.
7	<p>Directors of an ICVC, other than the ACD</p> <p>Other than for the <i>ACD</i>:</p> <ol style="list-style-type: none"> (1) the names and positions in the <i>ICVC</i> of the <i>directors</i>; and (2) the manner, amount and calculation of the <i>remuneration</i> of the <i>directors</i>.
8	<p>The depositary</p> <p>The following particulars of the <i>depositary</i>:</p> <ol style="list-style-type: none"> (1) its name and the nature of its corporate form; (2) the country or territory of its incorporation; (3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and (4) if neither its registered office nor its head office is in the <i>United Kingdom</i>, the address of its principal place of business in the <i>United Kingdom</i>.
9	<p>The investment adviser</p> <p>If an <i>investment adviser</i> is retained in connection with the business of the <i>authorised fund</i>, its name and whether or not it is authorised by the <i>FCA</i>.</p>
10	<p>The auditor</p> <p>The name of the auditor of the <i>authorised fund</i>.</p>
11	<p>The register of Unitholders</p> <p>Details of the address in the <i>United Kingdom</i> where the <i>register of unitholders</i> is kept and can be inspected by <i>unitholders</i>.</p>
12	<p>Payments out of the scheme property</p> <p>The payments that may be made out of the <i>scheme property</i> to</p>

any *person* whether by way of *remuneration* for services, or reimbursement of expense and for each category of *remuneration* or expense, the following should be specified:

- (1) the current rates or amounts of such *remuneration*;
- (2) how the *remuneration* will be calculated and accrue and when it will be paid;
- (3) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
 - (a) introduce a new category of *remuneration* for its services; or
 - (b) increase the basis of any current charge; or
 - (c) change the basis of the treatment of a payment from the *capital property* set out in COLL 8.5.13 R (2) (Payments);

particulars of that introduction or increase and when it will take place;

- (4) the types of any other charges and expenses that may be taken out of the *scheme property*;
- (5) if, in accordance with COLL 8.5.13 R (2), all or part of the *remuneration* or expense are to be treated as a capital charge:
 - (a) that fact; and
 - (b) the basis of the charge which may be so treated; and
- (6) where donations are to be made to one or more *registered charities* for Sharia compliance purposes from the *income property* of the *scheme* (in this *rule*, 'purification'), in addition to the details required above, the *person* who advises the *authorised fund manager* on the required percentage of the *income property* recognised for purification.

13 Dealing

Details of:

- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale* and *redemption* of *units*;
- (2) the procedures for effecting:
 - (a) the *issue* and *cancellation* of *units*;
 - (b) the *sale* and *redemption* of *units*; and
 - (c) the settlement of transactions;
- (3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in COLL 8.5.11 R (3) (Sale and redemption) may be applied;
- (4) the circumstances in which the *redemption* of *units* may be suspended;
- (5) the *days* and times in the *day* on which recalculation of the *price* will commence;
- (6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
 - (a) any one *person* may hold; and

- (b) may be the subject of any one transaction of *sale or redemption*;
- (7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption of units* in specie;
- (8) the circumstances in which the further *issue* of *units* in any particular *class* may be limited and the procedures relating to this;
- (9) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *depository* of an *AUT* or *ACS* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*;
- (10) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer; and
- (11) if the *authorised fund manager* deals as principal in *units* of the *scheme* and holds them for that purpose, a statement of its policy for doing so and, where applicable:
 - (a) a description of when the *authorised fund manager* may retain any profits it earns and absorb any losses it incurs for these activities; and
 - (b) a statement of non-accountability as referred to in COLL 8.5.14G.

14 Valuation of scheme property

Details as to:

- (1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a description of any circumstance where the *scheme property* may be specially valued;
- (2) in relation to each purpose for which the *scheme property* must be valued, the basis on which it will be valued; and
- (3) how the *price* of *units* of each *class* will be determined, including a statement that a *forward price* basis is to be applied.

15 Sale and redemption charges

If the *authorised fund manager* makes any charges on *sale* or *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

15A Property Authorised Investment Funds

For a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or can-

cellation of *units* if the *authorised fund manager* reasonably considers such action to be:

- (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
- (b) in the interests of the *unitholders* as a whole.

16 General information

Details as to:

- (1) when annual and half- yearly reports will be published; and
- (2) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

17 Information on the umbrella

In the case of a *scheme* which is an *umbrella*, the following information:

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption* and *sale*;
- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*;
- (5) for an *ICVC* or a *co-ownership scheme*, that:
 - (a) for an *ICVC*, its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
 - (aa) for a *co-ownership scheme*, the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the participants in that *sub-fund*; and
 - (b) for an *ICVC* or a *co-ownership scheme*, while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will

	react to regulations 11A and 11B of the <i>OEIC Regulations</i> or, as the case may be, section 261P of the Act; and
	(6) the <i>FCA</i> product reference number (PRN) of each <i>sub-fund</i> .
18	<p>Application of the prospectus contents to an umbrella</p> <p>For a <i>scheme</i> which is an <i>umbrella</i>, information required must be stated:</p> <p>(1) in relation to each <i>sub-fund</i> where the information for any <i>sub-fund</i> differs from that for any other; and</p> <p>(2) for the <i>umbrella</i> as a whole, but only where the information is relevant to the <i>umbrella</i> as a whole.</p>
18A	<p>Investment in overseas property through an intermediate holding vehicle</p> <p>If investment in an overseas immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of overseas immovables by the <i>scheme</i>.</p>
18B	<p>Information on authorised contractual schemes</p> <p>A statement that:</p> <p>(1) a <i>unitholder</i> in a <i>co-ownership scheme</i> is not liable to make any further payment after he has paid the price of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> he holds;</p> <p>(2) a <i>unitholder</i> in a <i>limited partnership scheme</i> is not liable for the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised contractual scheme manager</i> to meet such debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business;</p> <p>(3) the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business; and</p> <p>(4) the <i>scheme property</i> of a <i>co-ownership scheme</i> is beneficially owned by the <i>participants</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i>).</p>
18C	<p>Sustainability information</p> <p>The following information, as applicable:</p> <p>(1) where a <i>sustainability label</i> is used in relation to a <i>scheme</i>, the information set out at ESG 5.3.3R and ESG 5.3.6R, in accordance with ESG 5.3.2R(1); or</p> <p>(2) where a <i>sustainability label</i> is not used in relation to a <i>scheme</i>, but that <i>scheme</i> uses the terms in ESG 4.3.2R(2) under ESG 4.3.2R(1) the information required under ESG 5.3.2R(2).</p>
19	<p>Additional information</p> <p>Any other material information which is within the knowledge of the <i>directors</i> of an <i>ICVC</i> or the <i>authorised fund manager</i> of an <i>AUT</i> or <i>ACS</i>, or which the <i>directors</i> or <i>authorised fund manager</i></p>

would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating.

Pre-sale information to be made available on securities financing transactions and total return swaps

8.3.4A

G

The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* must make available to investors before they invest.

■ COLL 4.2.5BEU and ■ COLL 4.2.5CEU copy out the relevant provisions of that regulation.

An *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* should publish the information in the *scheme prospectus*.

An *authorised fund manager* of a *qualified investor scheme* that does not use *securities financing transactions* or *total return swaps* is not required to include the information in ■ COLL 4.2.5CEU in the *prospectus* or other pre-sale documents.

[Note: A transitional provision applies to ■ COLL 8.3.4AG: see ■ COLL TP 1.39G]

Report and accounts

8.3.5

R

- (1) The *authorised fund manager* must prepare a report in respect of each *annual accounting period* and *half-yearly accounting period*.
- (2) [deleted]
- (2A) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.
- (3A) The timing of the publication of the annual report in (3) is subject to ■ FUND 3.3.3R if the *authorised fund manager* is a *full-scope UK AIFM*.
- (4) [deleted]
- (5) The *authorised fund manager* must provide free of charge on the request of any *person* eligible to invest in the *scheme* a copy of the latest annual or half-yearly report before the conclusion of any sale to such *person*.
- (6) The *authorised fund manager* must provide a copy of each annual and half-yearly report to the *FCA*.

- (7) For a *scheme* which is an *umbrella*, any annual report provided under (3) or (5) may be a report prepared under ■ COLL 8.3.5AR (3), but the *authorised fund manager* must nevertheless provide free of charge the report prepared under ■ COLL 8.3.5AR (2) if a *unitholder* or any other *person* eligible to invest in the *scheme* requests it.

Contents of the annual report

8.3.5A

R

- (1) An annual report, other than for a *scheme* which is an *umbrella*, must contain:
- (a) the accounts for the *annual accounting period* prepared in accordance with the requirements of the *SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R (Authorised fund manager's report);
 - (bA) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A) (Comparative information);
 - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R (Report of the depository);
 - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor);
 - (e) subject to ■ COLL 8.3.5AR(1)(d), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R;
 - (f) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and
 - (g) if applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments.
- (2) An annual report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
- (a) for each *sub-fund*:
 - (i) the accounts required by (1)(a);
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
 - (iii) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A);
 - (iv) subject to ■ COLL 8.3.5AR(2)(v), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R;
 - (v) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and

- (vi) if applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments;
 - (b) [deleted]
 - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
 - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual report for any one or more individual *sub-funds* of the *umbrella*, in which case it must contain:
- (a) for the *sub-fund*:
 - (i) the accounts required by (1)(a);
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R; and
 - (iii) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A);
 - (b) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
 - (c) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (4) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* or *sub-fund* for the relevant *annual accounting period*, and of the financial position of the *authorised fund* or *sub-fund* as at the end of that period.
- (5) An annual report of an *authorised fund* must also contain a statement setting out a description of the assessment of value required by ■ COLL 8.5.17R including:
- (a) a separate discussion and conclusion for the matters covered in each paragraph of ■ COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;
 - (b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;
 - (c) an explanation for any case in which *unitholders* hold *units* in a *class* for which the payments out of *scheme property* in relation to that *class* as set out in the *prospectus* (in this rule, "charges") are higher than those applying to other *classes* of the same *scheme* with substantially similar rights;
 - (d) the conclusion of the *authorised fund manager's* assessment of whether the charges are justified in the context of the overall value delivered to the *unitholders* in the *scheme*; and

(e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the *unitholders*, a clear explanation of what action has been or will be taken to address the situation.

(6) An *AFM* need not include the information required by (5) in its annual report if it makes the information available to *unitholders* annually in a composite report covering two or more of the *schemes* it manages, published in the same manner as the annual report.

Information to be included in annual reports on securities financing transactions and total return swaps

8.3.5AA

G

(1) The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* must include in the *scheme's* annual report.

(2) ■ COLL 4.5.8ABEU and ■ COLL 4.5.8ACEU copy out the relevant provisions of that regulation.

(3) An *authorised fund manager* of a *qualified investor scheme* that has not used *securities financing transactions* or *total return swaps* during the relevant *annual accounting period* is not required to include the information in ■ COLL 4.5.8ACEU in its reports.

Contents of the half-yearly report

8.3.5B

R

(1) A half-yearly report on an *authorised fund* or *sub-fund* must contain:

(a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *SORP*;

(b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;

(c) subject to ■ COLL 8.3.5BR(1)(d), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R, where the half-yearly report most closely follows the reporting deadline of 30 June, under ■ ESG 2.1.1R(1); and

(d) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R, where the half-yearly report is the report that most closely follows the date on which Part B of the *public product-level sustainability report* was published.

(2) For a *scheme* which is an *umbrella*, the *authorised fund manager* may choose whether the half-yearly report is prepared for the *umbrella* as a whole, or for each individual *sub-fund*, or both.

Authorised fund manager's report

8.3.5C

R

The report of the *authorised fund manager* must include:

- (1) a review of the investment activities during the period to which the report relates;
- (1A) a portfolio statement prepared in accordance with the requirements of the *SORP*;
- (1B) in the case of an *umbrella* which has more than one *sub-fund*, particulars in the form of a table showing, as at the end of the period to which the report relates:
 - (a) for each *sub-fund*, the number of *units* in that *sub-fund* that were held by a second *sub-fund* of that *umbrella*; and
 - (b) the value of each such holding;
 or, alternatively, a statement that there were no such holdings as at the end of that period;
- (2) particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report; and
- (3) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

Report of the depositary

8.3.5D

R

- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The *depositary's* report must contain:
 - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
 - (b) a statement whether in any material respect:
 - (i) the *issue, sale, redemption and cancellation* and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the fund*; and
 - (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

Signing of annual and half-yearly reports

8.3.5E

R

The annual reports in ■ COLL 8.3.5AR (1) and ■ (2) and the half-yearly reports in ■ COLL 8.3.5BR (1) must:

- (1) in the case of an *ICVC*, if there is:

- (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
- (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT* or *ACS*, if the *authorised fund manager* has:
 - (a) more than one director, be signed by at least two directors of the *authorised fund manager*; or
 - (b) only one director, be signed by the director of the *authorised fund manager*.

Alterations to the scheme and notices to Unitholders

8.3.6

R

- (1) Any proposed change which would be reasonably considered to be a fundamental change to the *scheme* requires the prior sanction of an ordinary resolution of the *unitholders*.
- (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *Unitholders* to become effective.
- (3) Alterations affecting only a particular *sub-fund* or *class* of *units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class* of *units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
- (4) This *rule* and **COLL 8.3.8 R** (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class* of *units* rather than the *scheme* or *sub-fund* as a whole.

Alterations to the scheme and notices to Unitholders: guidance

8.3.7

G

Although account should be taken of the *guidance* on fundamental changes (**COLL 4.3.5 G** (Guidance on fundamental changes)) and significant changes (**COLL 4.3.7 G** (Guidance on significant changes)) the impact of any change to the *scheme* should be assessed individually based on the nature of the *scheme* and its investor profile.

Meetings

8.3.8

R

- (1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the *instrument constituting the fund* and be reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all proceedings to which **COLL 8.3.6 R** (Alterations to the scheme and notices to Unitholders) and this *rule* are relevant.
- (3) The provisions in **COLL 4.4.12 R** (Notices to Unitholders), **COLL 4.4.13 R** (Other notices) and **COLL 4.4.14 G** (References to writing and electronic documents) apply in relation to *qualified investor schemes*.

8.4 Investment and borrowing powers

Application

- 8.4.1** **R** (1) Subject to (1A), this section applies to an *ICVC* which is a *qualified investor scheme* and an *authorised fund manager* and a *depository* of a *qualified investor scheme*.
- (1A) Other than **■** COLL 8.4.2R, **■** COLL 8.4.4CG, **■** COLL 8.4.7R, **■** COLL 8.4.8R and **■** COLL 8.4.9AG this section does not apply where the *qualified investor scheme* in question is a *regulated money market fund*.

- 8.4.1A** **R** (1) Where this section refers to a second *scheme*, and the second *scheme* is a *feeder scheme*, which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the *feeder scheme's* master *scheme* invests.
- (2) Where this section refers to a second *scheme*, and the second *scheme* is a master *scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *qualified investor scheme* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

Spread of risk

- 8.4.2** **R** An *authorised fund manager* must take reasonable steps to ensure that the *scheme property* of a *qualified investor scheme* provides a spread of risk, taking into account the investment objectives and policy of the *scheme* as stated in the most recently published *prospectus*, and in particular, any investment objective as regards return to the *unitholders* (whether through capital appreciation or income or both).

Investment powers: general

- 8.4.3** **R** (1) The *scheme property* of a *qualified investor scheme* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the fund* and the *prospectus* may further restrict:
- (a) the kinds of assets in which the *scheme property* may be invested;

- (b) the types of transactions permitted and any relevant limits; and
- (c) the borrowing powers of the *scheme*.

Qualified investor schemes: general

8.4.4

R

The *scheme property* of a *qualified investor scheme* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:

- (1) any *specified investment*:
 - (a) within articles 74 to 86 of the *Regulated Activities Order*; and
 - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a *specified investment* within (a);
- (1A) (to the extent not within (1)(a)) an interest in a loan, provided that the loan was not originated to:
 - (a) a *natural person*;
 - (b) the *authorised fund manager* of the *qualified investor scheme*;
 - (c) the *depository* of the *qualified investor scheme*;
 - (d) an *affiliated company* of the *person* in (b) or (c); or
 - (e) a *person* who intends to use, or uses, the credit for the purpose of investing in a *derivative*, *cryptoasset derivative*, an *unregulated transferable cryptoasset*, *precious metals* or a *commodity contract* within (4);
- (2) an interest in an immovable under ■ COLL 8.4.11 R (Investment in property);
- (3) *precious metals*; or
- (4) a *commodity contract* traded on an *RIE* or a *recognised overseas investment exchange*.

[**Note:** Full-scope UK AIFMs are subject to specific requirements relating to conflicts of interest (see articles 30 to 36 in the *AIFMD level 2 regulation* and ■ SYSC 10.1.23R to ■ SYSC 10.1.26R (Additional requirements for an AIFM)).]

[**Note:** In relation to (1A), a borrower who receives *money* by way of *deposit* from a person who is not a *bank* may (if the borrower is acting by way of business) be carrying on the *regulated activity* of *accepting deposits*, but an exclusion in the *Regulated Activities Order* may be available. See also article 2 of the *Business Order*.]

Money market funds

8.4.4A

R

[deleted]

8.4.4B

R

[deleted]

8.4.4C

G

Investment powers and limits for *qualified investor schemes* that are *regulated money market funds* are set out in the *Money Market Funds Regulation*. Subject to complying with that Regulation, the *instrument constituting the fund* may further restrict:

- (1) the kinds of assets in which the *scheme property* may be invested;
- (2) the types of transactions permitted and any relevant limits; and
- (3) the borrowing powers of the *scheme*.

Investment in collective investment schemes

8.4.5

R

(1) Subject to (2) and (3) (where applicable), a *qualified investor scheme* may invest in *units* in a *scheme* (a '*second scheme*') only if the *second scheme* is:

- (a) a *regulated collective investment scheme*; or
- (b) a *scheme* not within (a) where the *authorised fund manager* has taken reasonable care to determine that:
 - (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;
 - (ii) the calculation of the net asset value of each of the *second schemes* and the maintenance of their accounting records is segregated from the investment management function;
 - (iii) it (and any *master scheme* to whose *units* it is *dedicated*) is prohibited from investing in *units* of the *qualified investor scheme* or, if there is no such prohibition, the *qualified investor scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made by either the *second scheme* or any *fund* in which the *second scheme* invests; and
 - (iv) it operates in accordance with the principle of risk spreading as described in ■ COLL 8.4.2 R.

(2) A *qualified investor scheme* must not invest more than 20% in value of the *scheme property* in *units* in *second schemes* which are *unregulated schemes*, *qualified investor schemes* or *long-term asset funds* unless the *authorised fund manager* has carried out appropriate due diligence on each of the *second schemes* and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the *second scheme* complies with relevant legal and regulatory requirements.

(3) The *authorised fund manager* of a *qualified investor scheme* with more than 20% in value of the *scheme property* invested in one or more *second schemes* which are *unregulated schemes*, *qualified investor schemes* or *long-term asset funds* must carry out appropriate due diligence on those *schemes* on an ongoing basis.

Investment in a collective investment scheme that is an umbrella

8.4.5A **R** Where the second *scheme* in ■ COLL 8.4.5 R is an *umbrella*, the provisions apply to each *sub-fund* as if it were a separate *scheme*.

8.4.5B **G**

- (1) The *authorised fund manager* of a *qualified investor scheme* carrying out due diligence for the purpose of ■ COLL 8.4.5R should use reasonable efforts to make enquiries and obtain the information needed to be able to consider the matters specified in ■ COLL 5.7.11G, as if that *guidance* related to ■ COLL 8.4.5R.
- (2) Where ■ COLL 5.7.11G (10) refers to ■ COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to ■ COLL 8.5.9 R (Valuation, pricing and dealing).
- (3) In addition to the *guidance* at ■ COLL 5.7.11 G the *authorised fund manager* should, as part of its due diligence process, consider whether the property of each of the second *schemes* is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second *scheme* and, if not, what controls over the property of the second *scheme* are in place to protect investors.

[Note: See also articles 18 to 20 of the *AIFMD level 2 regulation* for further requirements that apply to *full-scope UK AIFMs* in relation to due diligence.]

Delivery of property under a transaction in derivatives or a commodities contract

8.4.6 **R**

- (1) An *authorised fund manager* must take reasonable care to determine the following when entering into any transaction in *derivatives* or any *commodity* contract which may result in any asset becoming part of the *scheme property*:
 - (a) if it is an asset in which the *scheme property* could be invested, that the transaction:
 - (i) can be readily closed out; or
 - (ii) would at the expected time of delivery relate to an asset which could be included in the *scheme property* under the *rules* in this chapter; or
 - (b) in any other case that the transaction can be readily closed out.
- (2) An *authorised fund manager* may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the *unitholders*, provided it has the consent of the *depository*.
- (3) Any asset within (1) acquired in accordance with (2) may form part of the *scheme property* despite any other *rule* in this chapter until the position can be rectified.

Cover for transactions in derivatives and forward transactions

- 8.4.7 **R**
- (1) A transaction in *derivatives* or a forward transaction may be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under (2).
 - (2) Exposure is globally covered if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure taking into account any reasonably foreseeable market movement.
 - (3) The total exposure relating to *derivatives* held in a *qualified investor scheme* may not exceed the net value of the *scheme property*.
 - (4) No element of cover may be used more than once.

- 8.4.7-A **G**
- (1) When calculating whether cover is adequate under **COLL 8.4.7R(2)**, the *authorised fund manager* may calculate the global exposure of the *scheme* by using the commitment approach or the value at risk approach. For this purpose, value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.
 - (2) The method selected should be appropriate, taking into account:
 - (a) the investment strategy pursued by the *qualified investor scheme*;
 - (b) the types and complexities of the *derivatives* and forward transactions used; and
 - (c) the proportion of the *scheme property* comprising *derivatives* and forward transactions.

Valuation of an OTC derivative

8.4.7A **R** A transaction in an *OTC derivative* must be capable of valuation which it will only be if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:

- (1) on the basis of the pricing model; or
- (2) on some other reliable basis reflecting an up-to-date market value;

which has been agreed between the *authorised fund manager* and the *depository*.

Continuing nature of limits and requirements

- 8.4.8 **R**
- (1) An *authorised fund manager* must, as frequently as necessary to ensure compliance with **COLL 8.4.7 R (2)** and **COLL 8.4.7 R (4)**, re-calculate the amount of cover required in respect of *derivatives* and forwards positions in existence under this chapter.

- (2) *Derivatives* and forwards positions may be retained in the *scheme property* only so long as they remain covered globally under ■ COLL 8.4.7 R.
- (3) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* positions and their contribution to the overall risk profile of the *scheme*.

Permitted stock lending

8.4.9

R

- (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund manager*, may enter into a *repo* contract or a *stock lending* arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).
- (2) The *depository* must ensure that the value of any *collateral*, for the *stock lending* arrangement is at all times at least equal to the value of the securities transferred by the *depository*.
- (3) In the case of the expiry of validity of any *collateral*, the duty in (2) is satisfied if the *depository* or the *authorised fund manager*, as appropriate, takes reasonable care to determine that sufficient *collateral* will be transferred by close of business on the *day* of expiry.

8.4.9A

G

The *Money Market Funds Regulation* sets out restrictions in relation to *stock lending* and *repo* contracts that apply in respect of *regulated money market funds*.

General power to borrow

8.4.10

R

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund manager*) may borrow money for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 100 % of the net value of the *scheme property* and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.
- (3) In this rule "borrowing" also includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.
- (4) Where the limit in (2) is breached, the *authorised fund manager* must take action in accordance with the principles set out in ■ COLL 8.5.3 R (3) to ■ COLL 8.5.3 R (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

Investment in property

8.4.11

R

- (1) Any investment in land or a building held within the *scheme property* of a *qualified investor scheme* must be in an immovable within (2).
- (2) For an immovable :
 - (a) it must be situated in a country or territory identified in the *prospectus*;
 - (b) the *authorised fund manager* must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and
 - (c) the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from the *appropriate valuer* that:
 - (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
 - (ii) states that in the *appropriate valuer's* opinion the interest in the immovable would if acquired by the *scheme*, be capable of being disposed of reasonably expeditiously at that valuation;
 - (d) unless (c) is satisfied, the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from an *appropriate valuer* valuing the interest in the immovable and stating that:
 - (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property*; and
 - (ii) in the opinion of the *appropriate valuer*, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and
 - (e) it must not be bought:
 - (i) if it becomes apparent to the *authorised fund manager* that the report in either (c) or (d) could no longer reasonably be relied upon; or
 - (ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).
- (3) Any contents of any building may be regarded as part of the relevant immovable.
- (4) An *appropriate valuer* must be a *person* who:
 - (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of an *authorised fund* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
 - (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *authorised fund manager* and *depository* of the *AUT* or *ACS*; and
 - (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

Investment in overseas property through an intermediate holding vehicle

- 8.4.11A **R**
- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.
 - (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

- 8.4.11B **G**
- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
 - (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
 - (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
 - (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
 - (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
 - (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

Investment limits for immovables

8.4.12 **R** The following limits apply in respect of immovables held as part of the *scheme property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under **COLL 8.4.11 R (2)(c)** or **COLL 8.4.11 R (2)(d)** or **COLL 8.4.13 R**, as appropriate;

- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*; and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme value* in any 12 *month* period, calculated at the date of the granting of the option.

Standing independent valuer and valuation

8.4.13

R

- (1) In relation to the appointment of a valuer the *authorised fund manager* must:
 - (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
 - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:
 - (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
 - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
 - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
 - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a), instead of under (c),
 it must immediately inform the *standing independent valuer* of that matter;
 - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
 - (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA 2 of the RICS Valuation – Global Standards 2017 UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to any provisions of the *instrument constituting the fund*.
- (3) In relation to immovables:

- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

8.4.14

G In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of **■** COLL 8.4.13R (2)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

8.5 Powers and responsibilities

Application

8.5.1

R

- (1) Subject to (2) and (3), this section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager*, any other *directors* of an *ICVC* and the *depository* of a *qualified investor scheme*.
- (2) ■ COLL 8.5.9R(1) to (8) and (10) do not apply where the *qualified investor scheme* is a *regulated money market fund*.
- (3) Where a *qualified investor scheme* is a *regulated money market fund*, ■ COLL 8.5.2R and ■ COLL 8.5.3R apply to the *authorised fund manager* and *depository* of that scheme to the extent the provisions are consistent with the requirements of the *Money Market Funds Regulation*.

Functions of the authorised fund manager

8.5.2

R

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the fund*;
 - (b) the applicable *rules*;
 - (c) the most recently published *prospectus*;
 - (d) for an *ICVC*, the *OEIC Regulations*; and
 - (e) where applicable, the *Money Market Funds Regulation*.
- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
- (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
 - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:

- (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
- (ii) by the *ACD* to the *ICVC*;
- (iii) by the *ICVC* to the *ACD*;
- (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
- (v) by the *depository*; (for the account of the *AUT* or *ACS*) to the *authorised fund manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the *OEIC Regulations*;
- (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the *rules* in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
- (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the *classes* of such *units*, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

8.5.3

R

- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 8.4 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 8.4 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

8.5.3A

R

Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a *foreign law contract* entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 8.2.6 R(2)(4A) and ■ COLL 8.2.6 R(2)(4B)), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

8.5.3B

G

In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the *foreign law contract*.

Duties of the depositary

8.5.4

R

- (1) The *depositary* is responsible for the safekeeping of all the *scheme property*.
- (2) The *depositary* must:
 - (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
 - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
 - (c) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;
 - (d) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions;
 - (e) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
 - (f) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 8.5.15 R (Income);
 - (g) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
 - (i) ■ COLL 8.4 (Investment and borrowing powers);
 - (ii) ■ COLL 8.5.9 R (Valuation, pricing and dealing);
 - (iii) ■ COLL 8.5.15 R (Income); and
 - (iv) where applicable, the provisions of the *Money Market Funds Regulation* relating to investment and borrowing powers, valuation, pricing, and dealing, and income.
 - (h) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
 - (i) be responsible for any other duties as set out in the *instrument constituting the fund*.

(3) If a relevant *ICVC* ceases to have any *directors*, the *depository* may act in accordance with ■ COLL 6.5.6 R(*ICVC* without a director).

(4) This *rule* applies to the *depository* of a *scheme* managed by a *full-scope UK AIFM* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[**Note:** Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depository* of a *qualified investor scheme* managed by a *small authorised UK AIFM*.]

Delegation

8.5.5

R

(1) A *small authorised UK AIFM* (or in addition any other *director* in the case of an *ICVC* managed by a *small authorised UK AIFM*) may delegate any function to any *person*.

(2) (a) The *depository* of a *scheme* managed by a *small authorised UK AIFM* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depository* to perform its functions.

(b) However, it must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.

(3) Subject to any provisions of the *OEIC Regulations*, the delegator in (1) and (2) will not be responsible under the *rules* in *COLL* for any act or omission of the delegate provided that the delegator can show:

(a) that it was reasonable for the delegator to obtain assistance to perform the function in question;

(b) that the delegate was and remained competent to provide that assistance; and

(c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

Delegation and responsibility for regulatory obligations

8.5.6

G

Directors of an *ICVC*, *authorised fund managers* and *depositories* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

8.5.7

R

(1) The *authorised fund manager* and the *depository* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.

- (2) Paragraph (1) is subject to any provision in the *instrument constituting the fund* and the *prospectus* imposing a prohibition in relation to any type of transaction.

The register of Unitholders: AUTs or ACSs

8.5.8

R

- (1) The *authorised fund manager* or the *depository* of an AUT or ACS (in accordance with their responsibilities as set out in the *instrument constituting the fund*) must maintain a *register of unitholders* as a document in accordance with this rule.
- (2) The *register* must contain:
- (a) the name and address of each *Unitholder* (for joint *Unitholders* no more than four need to be registered);
 - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
 - (c) the date on which the *Unitholder* was registered in the *register* for the *units* standing in his name.
- (3) The *authorised fund manager* or the *depository* of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *authorised fund manager* must immediately notify the *depository* of an AUT or ACS of any information he receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

Valuation, pricing and dealing

8.5.9

R

- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
- (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
- (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
- (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the fund* and the *prospectus*, as appropriate.
- (4A) [deleted]
- (4B) [deleted]
- (5) The *scheme* must have a *valuation point* on each *dealing day*.

- (5A) [deleted]
- (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
- (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.
- (8) [deleted]
- (9) The *authorised fund manager* must publish in an appropriate manner the *price* of any type of *unit* based on the valuation carried out in accordance with (6).
- (10) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
- (11) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

Profits from dealing as principal

8.5.9-B

R

- (1) Where an *authorised fund manager*:
 - (a) accepts instructions to *sell* and *redeem units as principal*; and
 - (b) is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,

subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was sold (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.
- (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3), when dealing as *principal* in relation to:
 - a *unit issued* at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager as principal*; and
 - a *unit redeemed* and *cancelled* at that *valuation point*.
- (3) The amount of the loss referred to in (2) is:
 - (a) for *units issued* in accordance with (2)(a), the difference between the *issue price* of a *unit* and the *sale price* of that *unit*, less any *preliminary charge*;
 - (b) for *units cancelled* in accordance with (2)(b), the difference between the *cancellation price* of a *unit* and the *redemption price* of that *unit*, before any *redemption charge* is applied.

8.5.9-A

G

- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent *valuation point*.
- (5) This *rule* applies to the *redemption* and *sale of units* of different *classes* at the same *valuation point*, if those *classes* are treated as one for the purpose of ■ COLL 8.5.10AR.
- (1) The *authorised fund manager* may commit its own capital to hold *units for dealing as principal* and may seek to profit from gains in the value of the *units* it holds, when it *issues* or *redeems units* at one *valuation point* then *sells* or *cancels* them at a later *valuation point*. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the *units* fall in value, or from the ability to match simultaneous *sales* and *redemptions* at different *prices* at no risk to its own capital.
- (2) The *AFM* may allocate any amount arising under ■ COLL 8.5.9-BR(1) in the interests of investors by paying it into *scheme property* for the benefit of all *unitholders*. Alternatively, the *AFM* may redistribute it individually among the transacting investors.
- (3) Where the *AFM* intends to allocate a payment to *scheme property*, it should determine if the amount (when added to any other amounts of the same kind relating to that *class of units*) would, if taken into account in the *scheme's* valuation, affect the accuracy of the *unit prices* to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the *scheme* until the payment is transferred. Such payments into *scheme property* should be made regularly and no less frequently than payments for the *AFM's* management charge are transferred out of *scheme property*.
- (4) The calculation to be performed under ■ COLL 8.5.9-BR should be carried out in relation to each *valuation point* of the *scheme* on a timely basis. Where it is not practical to do this before *unit prices* are calculated and published, the *AFM* should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to *scheme property*.

8.5.9A

R

[deleted]

8.5.9B

G

[deleted]

Issues and cancellations of units

8.5.10

R

- (1) The *authorised fund manager* must:
 - (a) ensure that at each *valuation point* there are at least as many *units* in issue of any *class* as there are *units* registered to *unitholders* of that *class*; and
 - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.

- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*, and, where applicable, in accordance with the *Money Market Funds Regulation*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this rule.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *depository* of the *AUT* or *ACS* to *issue* or cancel *units* where the *authorised fund manager* would otherwise be obliged to *sell* or redeem the *units* in the manner set out in the *prospectus*.
- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

Issue and cancellation of units in multiple classes

8.5.10A

R

If a *qualified investor scheme* has two or more *classes* of *unit* in *issue*, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Transfer of units in an ACS

8.5.10B

R

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 8.2.6R(2)(6)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and ■ COLL 8.3.4R(5B)(2) (Table: contents of qualified investor scheme prospectus), *units* in the *ACS* may only be transferred to a *person* :

- (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person who already holds units in the scheme*; and
- (b) to whom *units* in a *qualified investor scheme* may be promoted under ■ COBS 4.12B.7R.

8.5.10C

G

The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 8.5.10E R (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those *units*.

Responsibilities of the authorised contractual scheme manager in relation to ACS units

8.5.10D

R

(1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *qualified investor scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate Unitholder in a qualified investor scheme*, unless:

- (a) that *person* is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person who already holds units in the scheme*; and
- (b) *units* in a *qualified investor scheme* may be promoted to that *person* under ■ COBS 4.12B.7R.

(2) The *authorised contractual scheme manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

Redemption of ACS units in a QIS by an authorised contractual scheme manager

8.5.10E

R

The *authorised contractual scheme manager* of a *qualified investor scheme* which is an *ACS* must *redeem units* in the *scheme* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in ■ COLL 8 Annex 2(1) and (2) (*ACS Qualified Investor Schemes: eligible investors*).

Sale and redemption

8.5.11

R

(1) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* to any eligible investor (within any conditions in the *instrument constituting the fund* and the *prospectus* which must be fair and reasonable as between all

unitholders and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such *sale*.

- (2) The *authorised fund manager* must, at all times during the *dealing day*, effect a *redemption* on the request of any eligible *unitholder* (within any conditions in the *instrument constituting the fund* and the *prospectus*) of *units* owned by that *unitholder*, unless the *authorised fund manager* has reasonable grounds to refuse such *redemption*.
- (3) On agreeing to a *redemption* of *units* within (2), the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *instrument constituting the fund* or the *prospectus*, unless it has reasonable grounds for withholding payment.
- (4) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which must be fair and reasonable as between redeeming *unitholders* and continuing *unitholders*.

Limited redemption periods

8.5.12

G

The maximum period between *dealing days* for a *qualified investor scheme* will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the *scheme*. For instance, for a *scheme* aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between *dealing days* for liquidity reasons than for a *scheme* investing predominantly in listed *securities*.

Property Authorised Investment Funds

8.5.12A

R

- (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").
 - (1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:
 - (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
 - (b) in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
 - (a) notify the *body corporate* of that event;
 - (b) not pay any income distribution to the *body corporate*; and
 - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.

- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

8.5.12B

G

Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

Payments

8.5.13

R

- (1) An *ICVC* must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) Payments out of the *scheme property* may be made from *capital property* rather than from *income property*, provided the basis for this is set out in the *prospectus*.
- (3) Donations to one or more *registered charities* for Sharia compliance purposes (in this *rule*, 'purification'), as set out in and authorised by the *prospectus* of the *scheme*, may be recovered from *income property* of the *scheme* where they represent the required percentage of the *income property* recognised for purification, as advised by a *person* with appropriate knowledge of finance and Islamic law.

8.5.13A

G

The *person* referred to in ■ COLL 8.5.13R(3) should be independent of the *authorised fund manager* and any *registered charity* to which payments may be made.

Exemption from liability to account for profits

8.5.14

G

Except as provided in ■ COLL 8.5.9-BR, an *affected person* is not liable to account to another *affected person* or to the *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Income

8.5.15

R

- (1) A *qualified investor scheme* must have:
 - (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*;
 the details of which must be set out in the *prospectus*.
- (1A) ■ COLL 6.8.2 R (2) to ■ COLL 6.8.2 R (7) (Accounting periods) also apply to the *half-yearly accounting period* and *annual accounting period* of a *qualified investor scheme*.
- (2) A *qualified investor scheme* must have an *annual income allocation date*, which must be within four months of the *accounting reference date*.
- (3) A *qualified investor scheme* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (3A) ■ COLL 6.8.3 R (3) (Income allocation and distribution) to ■ COLL 6.8.3A G (Allocation of income to difference classes of unit) also apply to a *qualified investor scheme*.
- (4) [deleted]
- (5) [deleted]
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]

Application of assessment of value and independent director rules

8.5.16

R

■ COLL 8.5.17R to ■ COLL 8.5.22R apply to an *authorised fund manager* (other than one which is managing an *authorised fund* under a *temporary permission*) of an *AUT*, *ACS* or *ICVC*.

Assessment of value

8.5.17

R

- (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.
- (2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class of units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

8.5.18

G

The *guidance* in ■ COLL 6.6.22G applies to interpreting the requirements of ■ COLL 6.6.21R as applied by ■ COLL 8.5.17R.

8.5.19 **E** Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COLL 6.6A.2R, ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

Independent directors

- 8.5.20 **R**
- (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural *persons*.
 - (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
 - (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
 - (4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
 (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.
 (c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.
 - (5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten year period referred to in (4).
 - (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.

8.5.21 **G** The *guidance* in ■ COLL 6.6.26G applies to interpreting the requirement for independence in ■ COLL 8.5.20R.

Allocation of responsibility for compliance to an approved person

8.5.22 **R** (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 8.5.17R, ■ COLL 8.5.20R, and ■ COBS 2.1.4R to an *approved person*.

-
- (2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.

8.6 Termination, suspension, and schemes of arrangement

Application

8.6.1

R

This section applies to:

- (1) an *authorised fund manager*, the *directors*, and the *depository* of a *qualified investor scheme*; and
- (2) an *ICVC* which is a *qualified investor scheme*.

Termination

8.6.2

R

For a *qualified investor scheme* the provisions in ■ COLL 7.3 to ■ COLL 7.5 will apply as appropriate as if ■ COLL 7 applied to *qualified investor schemes*.

Suspension

8.6.3

R

- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, temporarily suspend *dealings* in *units* of the *scheme*, a *sub-fund* or a *class*.
- (2) Any suspension within (1) must only be where the *authorised fund manager* has determined on reasonable grounds that there is good and sufficient reason in the interests of *unitholders* or potential *unitholders* and the *authorised fund manager* must have regard to the interests of all the *unitholders* in the *scheme* in reaching such an opinion.
- (3) At the commencement of suspension under (1), the *authorised fund manager* must immediately inform the *FCA* of the suspension and the reasons for it.
- (3A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.
- (3B) The *authorised fund manager* and the *depository* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.

- (4) The suspension of *dealings* in *units* must cease, as soon as (2) no longer applies.
- (4A) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FCA* of the results of this review and any change to the information provided in (3).
- (5) The *authorised fund manager* must inform the *FCA* immediately of the resumption of *dealings*.

8.6.4

G [deleted]

Schemes of arrangement
.....

8.6.5

R In relation to an *ICVC*, *ACS* or an *AUT* which is a *qualified investor scheme*, the provisions in **■ COLL 7.6** (Schemes of arrangement) will apply as appropriate to the *authorised fund manager*, any other *directors* of the *ICVC* and the *depository* as if **■ COLL 7.6** applied to a *qualified investor scheme* and did not exclude *unitholders* becoming *unitholders* in another *qualified investor scheme*.

ACS Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3 R and 8.1.4 G.

For the purposes of the *rule* on qualified investors in a *qualified investor scheme* which is an ACS (COLL 8.1.3R (3)), the *authorised contractual scheme manager* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a *person* :

- (1) who is a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or
 - (c) *person* who already holds *units* in the *scheme*; and
- (2) to whom *units* in a *qualified investor scheme* may be promoted to that *person* under COBS 4.12B.7R.

Chapter 9

Recognised schemes

9.1 Application and general information

Application

9.1.1

R

This chapter applies as follows:

- (1) ■ COLL 9.3 and ■ COLL 9.4 apply to *operators of schemes* applying for recognition under section 272 of the *Act* and to *operators* making a notification in respect of such *schemes* under sections 277 and 277A of the *Act*.
- (2) ■ COLL 9.5 applies to *operators of schemes* applying for recognition as *OFR recognised schemes* and to *operators* making a notification in respect of such *schemes* under sections 271I and 271J of the *Act*.

Purpose

9.1.2

G

- (1) This chapter applies in relation to 2 types of *recognised scheme*:
 - (a) a *scheme* which is individually recognised under section 272 of the *Act*; and
 - (b) an *OFR recognised scheme*, which is a *scheme* recognised under section 271A of the *Act*.
- (2) If a *scheme* is eligible to apply for recognition as an *OFR recognised scheme*, it may not apply for recognition under section 272 of the *Act*, within (1)(a).
- (3) This chapter enables current and potential *operators of recognised schemes* to know what information and *documents* the *FCA* requires to enable it to determine whether to recognise the *scheme* under the *Act* for marketing in the *United Kingdom*.
- (4) This chapter also sets out requirements relating to:
 - (a) the preparation and maintenance of a *prospectus* for a *recognised scheme*; and
 - (b) the facilities that an *operator of a recognised scheme* must provide to enable current and potential participants in the *scheme* who are present in the *United Kingdom* to obtain information and exercise their rights without undue difficulty or expense.

9.1.2A

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The effect of ■ GEN 2.2.32R to ■ GEN 2.2.36G and ■ COLL TP 1.1R(65) is that the *rules* in ■ COLL 9.4 on facilities continue to apply to a *TP UCITS qualifier* in relation to a *scheme* that is a *recognised scheme* under Part 6 of the

Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, until such time as that *scheme* ceases to be a *recognised scheme* under those Regulations.

General information

9.1.3

G

The *FCA* website sets out further information about which categories of *overseas collective investment scheme* are eligible to apply to the *FCA* to be *recognised schemes* under sections 271A and 272 of the *Act*, how to apply for recognition, and how to give notifications concerning *recognised schemes*.

<https://www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-recognition>

9.3 Section 272 recognised schemes

Information and documents to be supplied for a section 272 application

9.3.1

D

- (1) If the *operator* of a *scheme* makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the application must include the information in paragraph (4).
- (2) The *documents* must be in English or accompanied by a translation in English.
- (3) The *documents* must be certified by the *operator* to be true copies of the originals.
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the application:
 - (a) the name of the *scheme*;
 - (b) the legal form of the *scheme*;
 - (c) the name and address of the *operator*;
 - (d) the address of the place in the *United Kingdom* for service on the *operator* of notices or other *documents*;
 - (e) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;
 - (f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;
 - (g) the address of the place in the *United Kingdom* where *scheme* facilities (see ■ COLL 9.4) will be maintained;
 - (h) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:
 - (i) the proposed commencement date;
 - (ii) whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;
 - (i) a copy of the *instrument constituting the fund*;
 - (j) a copy of the *prospectus* or any similar document giving details of the *scheme*;
 - (k) a copy of the latest annual report and any subsequent half-yearly report;

- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; and
- (m) (where applicable) a copy of the *key information document* (see ■ COLL 9.3.4G).

Additional information required in the prospectus for an application under section 272

9.3.2 **R** An operator of a *scheme* applying for recognition under section 272 of the Act must ensure the prospectus:

- (1) contains a statement that "Complaints about the operation of the *scheme* may be made to the FCA."; and
- (2) states whether or not investors in the *scheme* would be covered by the compensation scheme, and if so, it must state how they are covered and who they would need to contact for further information.

Preparation and maintenance of prospectus

9.3.3 **R**

- (1) An operator of a *scheme* recognised under section 272 of the Act must comply with the requirements set out in ■ COLL 4.2 (Pre-sale notifications).
- (2) Where a *scheme* recognised under section 272 of the Act is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of ■ COLL 4.2.5 R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

Preparation of a key information document in accordance with the PRIIPs regulation

9.3.4 **G**

- (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).
- (2) The requirements of the *PRIIPs Regulation* are directly applicable.
- (3) As a result, when a *scheme* recognised under section 272 of the Act is made available to *retail clients* in the *United Kingdom* the operator must draw up a *key information document* in accordance with the *PRIIPs Regulation*, unless the operator of such a *scheme* is otherwise exempt from such a requirement under the *PRIIPs Regulation* for the time being.

Annual certificate of compliance

9.3.5 **D**

- (1) An operator of a *scheme* recognised under section 272 of the Act must provide a certificate to the FCA in writing that:
 - (a) sets out what steps it has taken to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised *scheme* taking effect during the most recent financial year of the *scheme*; and

- (b) explains whether, and if so how, any such changes, together with any changes to the *scheme* that have occurred during this period, may affect the *scheme's* ability to satisfy the requirements referred to in section 272(1)(d) of the *Act*.
- (2) The certificate must be provided to the *FCA* no later than:
 - (a) one *month* following the publication of the *annual report and accounts* of the *scheme*; or
 - (b) if the publication of the *annual report and accounts* of the *scheme* is delayed, one *month* after the last day on which the publication of the *annual report and accounts* of the *scheme* was due.
- (3) The certificate must be signed by an authorised signatory of the *operator*.
- (4) The certificate may apply to multiple *sub-funds* in an *umbrella* that are recognised under section 272 of the *Act*, if the names of each relevant *sub-fund* and of the *umbrella* are clearly stated.
- (5) The certificate must be delivered to the *FCA* by:
 - (a) sending a copy by email addressed to recognisedcis@fca.org.uk, including the subject line: "S.277A Certificate – [insert full name(s) of scheme]"; or
 - (b) by *post* to: Financial Conduct Authority, attn. S.277A Certificates, Fund Authorisations Team, Asset Management Department, Wholesale Supervision, 12 Endeavour Square, London E20 1JN, United Kingdom.

9.3.6 G An operator of a *scheme* recognised under section 272 of the *Act* need not provide a certificate under ■ COLL 9.3.5D if it has already sent the required information to the *FCA* within the last 12 *months* as the result of:

- (1) a requirement relating to an application for recognition of the *scheme* under section 274(2)(c) of the *Act*;
- (2) a direction relating to a proposed alteration of the *scheme* or to a change to the *operator*, *trustee* or *depository* under section 277(5)(b) of the *Act*; or
- (3) a previous certificate being provided under section 277A of the *Act*.

9.3.7 G The *operator* of a *scheme* recognised under section 272 of the *Act* should seek advice from professionals with appropriate qualifications or professional knowledge, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the *FCA* under ■ COLL 9.3.5D.

Notification of alterations to schemes

9.3.8 G Section 277(1) of the *Act* (Alteration of schemes and changes of operator, trustee or depository) requires notification by the *operator* to the *FCA* of certain proposed alterations to a *scheme* recognised under section 272 of the *Act* which, if made, would be a material alteration. The types of alterations

that constitute, or are likely to constitute, a material alteration are set out at ■ COLL 9.3.10R and ■ COLL 9.3.11G.

9.3.9

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In accordance with section 277(2) of the *Act*, effect is not to be given to any such proposed material alteration to the *scheme* unless:

- (1) the *FCA*, by written notice, has given its approval to the proposal; or
- (2) one *month*, beginning with the date the notice was given under section 277(1) of the *Act*, has expired without the *FCA* having given written notice to the *operator* that it has decided to refuse approval.

Material alteration of a scheme

9.3.10

R

For the purposes of section 277(1), a material alteration is an alteration which:

- (1) changes the purpose or nature of the *scheme*;
- (2) alters the risk profile of the *scheme*;
- (3) may materially prejudice a *participant* in the *scheme*;
- (4) affects the ability of *participants* in the *scheme* to exercise their rights in relation to their investments;
- (5) introduces any new type of payment or materially increases other types of payment that a *participant* in the *scheme* would have to pay out of *scheme property*;
- (6) changes the legal form of the *scheme*;
- (7) changes the name of the *scheme* or the name of the *umbrella* of which a *sub-fund* is a part;
- (8) will result in the restructuring of the *scheme* or a merger with another *scheme*;
- (9) changes the regulatory status of the *scheme*;
- (10) changes the regulatory status of the *operator* or, if the *scheme* has a *depository*, of the *depository*;
- (11) changes the composition of the board of *directors*, committee of management or other governing body of the *scheme*, if it has one; or
- (12) otherwise has a material effect on the *scheme* and its *participants*.

Guidance on material alterations

9.3.11

G

- (1) For the purpose of ■ COLL 9.3.10R, a material alteration is likely to include:
 - (a) any material changes to the investment objective or policy;
 - (b) any change to the investment strategy that involves taking exposure to a new class of assets with a different risk profile;

- (c) any change affecting arrangements for the redemption of *units* on behalf of *participants*, including any arrangements to sell *units* on an investment exchange;
- (d) any change to the facilities maintained in the *United Kingdom*, including marketing arrangements, in accordance with ■ COLL 9.4; and
- (e) any expansion or limitation of the powers and duties of the *operator* or, if the *scheme* has a *depository*, of the *depository*.

- (2) In addition to the particular matters specified in ■ COLL 9.3.10R(1) to (11), ■ COLL 9.3.10R(12) requires the *operator* of a *scheme* recognised under section 272 to notify the *FCA* of any other change which has a material effect on the *scheme* and its *participants*. Any change may be a material alteration depending on its degree of materiality and its effect on the *scheme* and its *participants*. Consequently, an *operator* will need to determine whether in each case a particular change is a material alteration or not.

Other notifications

- 9.3.12 G Section 277 of the *Act* also requires notification to the *FCA* of certain other changes in relation to a *scheme* recognised under section 272 of the *Act*, such as changes to the *operator* or *depository*. This should be kept in mind when considering any proposed change.

Recognition of parts of a scheme

- 9.3.13 G
- (1) Section 282C of the *Act* (Recognition of parts of schemes under section 272) sets out that section 272(1) of the *Act* may apply in relation to part of a *collective investment scheme* as it applies in relation to such a *scheme*. In our view, this means that the *FCA* is able to recognise one or more but not necessarily all *sub-funds* in an *umbrella*.
 - (2) As a result, references to a *scheme* in ■ COLL 9.3.8G to ■ COLL 9.3.12G include references to a *sub-fund* in an *umbrella*.

9.4 Facilities in the United Kingdom for schemes recognised under section 272 of the Act

General

- 9.4.1 **R**
- (1) The *operator* of a *scheme* recognised under section 272 of the Act must maintain facilities in the *United Kingdom* in order to satisfy the requirements of ■ COLL 9.4.2 R to ■ COLL 9.4.6 R.
- (2) In this section, a facility is a place of business that complies with ■ COLL 9.4.6 R (Place of facilities).

Documents

- 9.4.2 **R**
- (1) The *operator* of a *scheme* recognised under section 272 of the Act must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:
- (a) the *instrument constituting the fund*;
 - (b) any instrument amending the *instrument constituting the fund*;
 - (c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);
 - (d) for a *recognised scheme* which is an *EEA UCITS scheme*, the *EEA key investor information document*; and
 - (e) the latest annual and half-yearly reports.
- (1A) [deleted]
- (2) In relation to notices and *documents* sent by *operators* and *depositories* to and from the *United Kingdom*, ■ COLL 4.4.12 R (Notice to Unitholders) and ■ COLL 4.4.13 R (Other notices) apply.

Price and redemption

- 9.4.3 **R**
- (1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:
- (a) information in English can be obtained about prices of *units* in the *scheme*; and
 - (b) a *participant* may redeem or arrange for *redemption* of *units* in the *scheme* and obtain payment.

(2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

9.4.4 **R** [deleted]

Complaints

9.4.5 **R** The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

Place of facilities

9.4.6 **R** (1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.

(2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address, such other address in the *United Kingdom* where the *operator* can be contacted.

(3) [deleted]

9.5 OFR recognised schemes

Information and documents to be provided in relation to an application for recognition under section 271A

9.5.1

G

- (1) Under the *Act*, the *FCA* has the power to direct how an application for recognition of a *scheme* under section 271A of the *Act* must be made. The *FCA* also has the power to specify that the application contains, or is accompanied by, such information as the *FCA* may reasonably require for the purpose of determining it.
- (2) The application form for recognition of a *scheme* under section 271A of the *Act*, and guidance regarding *documents* and information which must be contained in (or provided together with) the application form, are available on the *FCA* website.
<https://www.fca.org.uk/firms/overseas-funds-regime-update-firms>
- (3) The application form requires the *operator* that is applying for recognition of the *scheme* to provide *documents* and information falling within the following categories:
 - (a) the identity of the *scheme*;
 - (b) the *scheme's* profile;
 - (c) the *scheme's* fees and charges;
 - (d) characteristics of the *scheme's units*;
 - (e) parties connected to the *scheme*; and
 - (f) the proposed marketing and distribution arrangements for the *scheme*.

9.5.2

G

The *FCA* considers that the *documents* and information falling within the categories set out in ■ COLL 9.5.1G(3) are reasonably required for the purposes of:

- (1) determining whether the conditions for recognition under section 271G(2) (Determination of applications) of the *Act* are met;
- (2) complying with its duty under section 271G(4) (Determination of applications) of the *Act* to refuse an application for recognition if the *FCA* considers it desirable to do so, in order to protect the interests of *participants* or potential *participants* in the *scheme* in the *United Kingdom*; and

- (3) complying with its duty to maintain a record of all *recognised schemes* under section 347 (The record of authorised persons etc.) of the *Act*, which is made public in the *Financial Services Register*.

9.5.3

D

Any *documents* accompanying an application for recognition of a *scheme* under section 271A must be:

- (1) in English or be accompanied by a translation in English; and
- (2) certified by the *operator* to be true copies of the originals.

Recognition of parts of a scheme

9.5.4

G

- (1) Section 2715 of the *Act* (Recognition of parts of schemes under section 271A) sets out that section 271A of the *Act* applies in relation to part of a *collective investment scheme* as it applies in relation to such a *scheme*. In our view, this means that the *FCA* is able to recognise one or more *sub-funds* in an *umbrella*, without necessarily recognising all of them.
- (2) As a result, references to a *scheme* in ■ COLL 9.5.9G to ■ COLL 9.5.10G and to an *OFR recognised scheme* in Part 17 of the *Act* include references to a *sub-fund* in an *umbrella*.

Preparation and maintenance of a prospectus relating to an OFR recognised scheme

9.5.5

R

- (1) The *operator* of an *OFR recognised scheme* must comply with the following requirements in ■ COLL 4.2 (Pre-sale notifications):
 - (a) ■ COLL 4.2.2R(1);
 - (b) ■ COLL 4.2.2R(2)(b) to ■ (d);
 - (c) ■ COLL 4.2.3R;
 - (d) ■ COLL 4.2.3AR; and
 - (e) ■ COLL 4.2.4R.
- (2) The *operator* of an *OFR recognised scheme* must ensure that the *prospectus* of the *scheme* contains the information required by ■ COLL 4.2.5R (Table: contents of the prospectus) to the extent that this information would be compatible with the basis upon which the *prospectus* is approved in the *scheme's Home State*.
- (3) In relation to (2), information is to be treated as incompatible with the basis upon which the *prospectus* is approved in the *scheme's Home State* if adding it to the *prospectus* conflicts with an existing statement that has already been approved by the *regulatory body* of the *scheme's Home State*.
- (4) For the purposes of (1) and (2), as appropriate, a reference in ■ COLL 4.2 to:
 - (a) an *authorised fund manager* is to be read as a reference to an *operator* of an *OFR recognised scheme*; and

- (b) an *authorised fund, AUT, ACS, ICVC and UCITS scheme* is to be read as a reference to an *OFR recognised scheme*.

9.5.6

R

The operator of an *OFR recognised scheme* must ensure that the *prospectus of the scheme*:

- (1) explains how investors in the *United Kingdom* can make a complaint about the *scheme, its operator or its depositary*;
- (2) (a) explains whether the activities of the *operator and depositary of the scheme* are covered by the *Financial Ombudsman Service* and the *compensation scheme*; and
 - (b) where they are not covered, contains a clear warning explaining that a *UK investor* may not be able to seek redress under the *UK regulatory system* for a complaint, or compensation for a financial loss suffered as a result of the *operator or depositary* being unable to meet their liabilities to *unitholders*;
- (3) explains whether or not an investor in the *United Kingdom* has the right to access:
 - (a) an alternative dispute resolution mechanism in the *Home State(s)* of the *scheme, its operator or its depositary* in order to resolve a complaint; or
 - (b) a compensation scheme in the *Home State(s)* of the *operator or the depositary* that can pay compensation to *unitholders* for losses incurred where those *persons* are unable to meet their liabilities to *unitholders*; and
- (4) explains, if the investor has the rights described in (3), how they may be exercised, including how further information may be obtained.

9.5.7

G

- (1) If the investor has any rights described in ■ COLL 9.5.6R(3), operators of *OFR recognised schemes* should consider including further information likely to be useful to investors.
- (2) Further information likely to be useful to investors would at least include details as to:
 - (a) whether investors are able to make a complaint or request for compensation in English to the respective bodies referred to in ■ COLL 9.5.6R(3);
 - (b) whether there is a cost to make a complaint or request for compensation to the respective bodies referred to in ■ COLL 9.5.6R(3);
 - (c) whether investors would be exposed to any requirement to pay costs by either of the respective bodies referred to in ■ COLL 9.5.6R(3) – for example, if their complaint or request for compensation should be unsuccessful;
 - (d) what the maximum financial limits are for awards of redress or compensation by the respective bodies referred to in ■ COLL 9.5.6R(3); and

(e) whether the decision by the body referred to in ■ COLL 9.5.6R(3)(a), such as the amount of redress that should be paid in relation to the complaint, is binding on the *operator* or *depository* (as applicable) if accepted by the investor.

(3) Where the *prospectus* of the *scheme* is provided electronically, such further information could be provided via a hyperlink to a website or another *document*.

Guidance on the UK retail disclosure regime

9.5.8 G [to follow]

Obligations on an operator of an OFR recognised scheme to notify the FCA

9.5.9 G (1) Section 271I(1) of the *Act* (Obligations of an operator of a section 271A scheme) requires an *operator* of an *OFR recognised scheme* to notify the *FCA* if it has contravened, or expects to contravene, a requirement imposed on it by or under the *Act*.

(2) Section 271I(2) of the *Act* requires an *operator* of an *OFR recognised scheme* to notify the *FCA* of certain changes relating to the *scheme*, such as changes to the *operator* or *depository*. This should be kept in mind when considering any proposed change.

(3) Section 271I(3) of the *Act* requires a notification under (1) or (2) to be made in writing as soon as reasonably practicable.

9.5.10 G (1) Section 271J of the *Act* provides that the *operator* of an *OFR recognised scheme* must provide to the *FCA* such information as the *FCA* may direct, and in such form and at such times as it may direct. The *FCA* will publish such directions on the *FCA* website.

(2) The information must be provided as soon as reasonably practicable, in the manner directed on the website. In a few cases, listed on the website, the *FCA*'s direction requires the *operator* to notify the *FCA* by email at the address specified for that purpose. In all other cases, the information should be provided by submitting a standard form.

9.5.11 D The *operator* of an *OFR recognised scheme* must notify the *FCA* as soon as reasonably practicable when the *operator* of an *OFR recognised scheme*:

(1) decides to terminate or wind up the *scheme*, or becomes aware that the *scheme* is or will be terminated or wound up; or

(2) decides to cease marketing the *scheme* in the *United Kingdom*.

9.5.12 G Where ■ COLL 9.5.11D(2) applies, the *operator* should request the *FCA* to withdraw recognition as an *OFR recognised scheme*. The *operator* should ensure that *UK* investors are given adequate written notice of the decision before the date on which the request takes effect.

Facilities for investors in the United Kingdom for OFR recognised schemes

9.5.13

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- (1) The *operator* of an *OFR recognised scheme* must maintain facilities for any *person* in the *United Kingdom* to:
- (a) inspect (free of charge) up-to-date copies in English of:
 - (i) the *instrument constituting the fund*, as amended from time to time;
 - (ii) the *prospectus*;
 - (iii) the latest annual report and (if more recent) the half-yearly report; and
 - (iv) the *key investor information document* or equivalent disclosure document;
 - (b) obtain paper copies of any of the *documents* in (a), at no more than a reasonable charge in the case of (i), and free of charge in the other cases; and
 - (c) obtain the latest *prices of units* in the *scheme*, or information about where they can be obtained free of charge.
- (2) The *operator* of an *OFR recognised scheme* must maintain facilities for any *unitholder* of the *scheme* in the *United Kingdom* to:
- (a) submit orders to subscribe for and *redeem units* in the *scheme* in accordance with the terms of its *prospectus*;
 - (b) obtain information about how any payment due to the *unitholder* will be made;
 - (c) provide information to enable the *operator* to maintain a record of each *unitholder's* full name and address and any other required details; and
 - (d) submit a complaint about the operation of the *scheme* to the *operator* and obtain information about arrangements for the resolution of the complaint.

9.5.14

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- (1) The *operator* may provide the facilities in ■ COLL 9.5.13R through an electronic medium where:
- (a) the *prospectus* states that the *operator* will normally communicate with all *unitholders* and their representatives through such a medium;
 - (b) *unitholders* have consented to the *operator* communicating with them in this way; and
 - (c) all services to *unitholders* are provided in English, free of charge.
- (2) If the conditions in (1)(a) and (b) are not fulfilled, the *operator* may provide the facilities in ■ COLL 9.5.13R through an electronic medium at the *unitholder's* choice but must additionally provide those facilities at a place in the *United Kingdom* which is open to members of the public during business hours.
- (3) The *operator* may use its own place of business in the *United Kingdom* if it has one, or else it must appoint a *person* with a place

9.5.15

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- of business in the *United Kingdom* to provide the facilities on its behalf.
- (4) The *prospectus* of the *scheme* must state the address of the place at which facilities are provided or explain how they can be accessed through an electronic medium.
 - (5) In relation to notices and *documents* sent by *operators* and *depositories* to and from the *United Kingdom*, ■ COLL 4.4.12R (Notice to unitholders) and ■ COLL 4.4.13R (Other notices) apply.
- (1) Under section 271F(1)(b) of the *Act*, the *operator* of an *OFR recognised scheme* must notify the *FCA* of an address in the *United Kingdom* at which notices and other *documents* may be served on the *operator*. This may be the same address specified for the purpose of ■ COLL 9.5.14R(2), or another address.
 - (2) Where the *operator* of an *OFR recognised scheme* intends to *communicate a financial promotion* relating to the *scheme*, the *financial promotion* will need to be *approved* unless the *financial promotion* benefits from an exemption in the *Financial Promotion Order*.
 - (3) If the *financial promotion* does not benefit from an exemption in the *Financial Promotion Order*, an *authorised person* will only be able to *approve a financial promotion* relating to an *OFR recognised scheme* if:
 - (a) that *person* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
 - (4) Where a *financial promotion* relating to an *OFR recognised scheme* needs to be *approved* by an *authorised person*, that *authorised person* does not need to be the *person* who provides *unitholder* facilities, or whose address is notified for the service of notices.

Chapter 10

Fees

Chapter 11

Master-feeder arrangements for UCITS schemes



11.1 Introduction

Application

11.1.1

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This chapter applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) an *ICVC*; and
- (4) a *depository* of an *AUT*, *ACS* or *ICVC*;

where such *AUT*, *ACS* or *ICVC* is a *UCITS* scheme that is a *feeder UCITS* or a *master UCITS* in accordance with ■ COLL 11.1.2 R (Table of application).

11.1.1A

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It may be possible for a *UCITS* scheme to be the *feeder UCITS* of a *master UCITS* that is an *EEA UCITS* scheme. In such a case, the ability of the *operator*, *AFM*, *depository*, and auditor of the *feeder UCITS* to comply with the applicable rules may depend upon whether appropriate agreements can be reached with the *management company*, *depository* and auditor of the *master UCITS*. It is not possible for an *EEA UCITS* scheme to be a feeder of a *master UCITS* scheme.

Table of application

11.1.2

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This table belongs to ■ COLL 11.1.1 R

Reference	ICVC	ACD	Any other directors of an ICVC	Authorised fund manager of an AUT or ACS	Depository of an ICVC, AUT or ACS
11.1.1R	x	x	x	x	x
11.1.3G	x	x	x	x	x
11.2.1G	x	x	x	x	
11.2.2R	x	x	x	x	
11.3.1R	x	x	x	x	
11.3.2R	x	x	x	x	
11.3.3G	x	x	x	x	
11.3.4G	x	x	x	x	
11.3.5R	x	x	x	x	

11.3.6R	x	x	x	x	
11.3.7R	x	x	x	x	
11.3.8R	x	x	x	x	
11.3.9R	x	x	x	x	
11.3.11R	x	x	x	x	
11.3.12R	x	x	x	x	
11.3.13R	x	x	x	x	
11.3.14G	x	x	x	x	
11.4.1R	x	x	x	x	x
11.4.2R					x
11.4.3R					x
11.4.4G					x
11.4.5G					x
11.5.6R	x	x	x	x	
11.6.1G	x	x	x	x	x
11.6.2R	x	x	x	x	x
11.6.3R	x	x	x	x	
11.6.4R	x	x	x	x	
11.6.5R	x	x	x	x	
11.6.6R	x	x	x	x	
11.6.7R	x	x	x	x	
11.6.8G	x	x	x	x	
11.6.9R	x	x	x	x	
11.6.10R	x	x	x	x	
11.6.11G	x	x	x	x	
11.6.12R	x	x	x	x	
11.6.13R	x	x	x	x	
11 Annex 1R	x	x	x	x	
11 Annex 2R	x	x	x	x	

Note 1: "x" means "applies", but not every paragraph in every provision referred to will necessarily apply.

Note 2: COLL 11.5 (with the exception of COLL 11.5.6 R) applies to auditors.

Purpose

11.1.3

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- (1) This chapter sets out:
 - (a) the notification requirements for a *UCITS scheme* to be approved as a *feeder UCITS* under section 283A (Master-feeder structures) of the *Act*; and
 - (b) the requirements which apply to a *feeder UCITS* where its *master UCITS* is wound up, merges with another *UCITS* or is divided into one or more *UCITS*.

- (2) This chapter also ensures there is a flow of information and *documents* between a *feeder UCITS* and its *master UCITS*. In particular, it allows the *authorised fund manager, depositary* and auditor of a *feeder UCITS* to obtain all information and *documents* necessary to perform their functions.
- (3) ■ COLL 11.5 (Auditors) also imposes requirements on auditors of a *master UCITS* and a *feeder UCITS*.
- (4) In this section references to:
 - (a) a *UCITS scheme, a feeder UCITS, a master UCITS, or EEA UCITS scheme* include the *sub-fund* of any such *scheme* and references to winding up a *scheme* are to be read as also applying to the termination of a *sub-fund*; and
 - (b) the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.

11.2 Approval of a feeder UCITS

Explanation

11.2.1

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- (1) Section 283A(1) (Master-feeder structures) of the *Act* provides that the *operator* of a *UCITS scheme* may not invest a higher proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FCA* (which implemented article 55 of the *UCITS Directive*), unless the investment is approved by the *FCA* in accordance with that section.
- (2) The relevant *rule* which implemented article 55(1) of the *UCITS Directive* is ■ COLL 5.2.11 R (9), which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

Application for approval of an investment in a master UCITS

11.2.2

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- (1) An application for approval of an investment in a *master UCITS* under section 283A of the *Act* must be accompanied by the following documents:
 - (a) the *instrument constituting the fund* of the *feeder UCITS* and of the *master UCITS*;
 - (b) the *prospectus* and the *key investor information* referred to in ■ COLL 4.7.2 R (Key investor information) of the *feeder UCITS* and of the *master UCITS*;
 - (c) the *master-feeder agreement* or the internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules);
 - (d) where applicable, the information to be provided to *unitholders* in accordance with ■ COLL 4.8.3 R (Information to be provided to Unitholders);
 - (e) if the *master UCITS* and the *feeder UCITS* have different *depositories*, the information-sharing agreement in accordance with ■ COLL 11.4.1R (2) (Information-sharing agreement between depositories); and
 - (f) if the *master UCITS* and the *feeder UCITS* have different auditors, the information-sharing agreement in accordance with ■ COLL 11.5.1 R (Information-sharing agreement between auditors).
- (2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation from a *person* acceptable to the *FCA* that the *master UCITS*:

- (a) is an *EEA UCITS scheme* or a *sub-fund* of it; and
- (b) fulfils the conditions set out in article 58(3)(b) and (c) of the *UCITS Directive*.

(3) The *documents* referred to in (1) and (2) must be provided in English.

[**Note:** article 59(3) of the *UCITS Directive*]



11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

11.3.1 **R** The *authorised fund manager* of a *UCITS scheme* that is a *master UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the provisions of *COLL* applicable in respect of a *UCITS scheme* under this chapter.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

11.3.1A **R** The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* of a *master UCITS* which is an *EEA UCITS scheme* must make a binding arrangement with the *management company* of the *master UCITS* to obtain all *documents* and information necessary to meet its regulatory obligations under the *Act*.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

Master-feeder agreement and internal conduct of business rules

- 11.3.2** **R**
- (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must enter into a *master-feeder agreement* which, at a minimum, complies with ■ [COLL 11 Annex 1 R](#).
 - (2) Where a *master UCITS* and a *feeder UCITS* are managed by the same *management company*, the *master-feeder agreement* may be replaced by internal conduct of business rules which, at a minimum, comply with ■ [COLL 11 Annex 2 R](#).
 - (3) The *authorised fund manager* of a *feeder UCITS* must not invest in *units* of the *master UCITS* in excess of the limit applicable under ■ [COLL 5.2.11 R \(9\)](#) (Spread: general) (20%) until the period of 30 calendar days referred to in ■ [COLL 4.8.3 R \(1\)](#) (Information to be provided to Unitholders) has elapsed and the following have become effective:
 - (a) the *master-feeder agreement*, or, if applicable under (2), the internal conduct of business rules;

- (b) the information-sharing agreement of the *depositories* in accordance with ■ COLL 11.4.1R (2) (Information-sharing agreement between depositories); and
- (c) the information-sharing agreement of the auditors in accordance with ■ COLL 11.5.1 R (Information-sharing agreement between auditors).

(4) An *authorised fund manager* of a *feeder UCITS* must make a copy of the *master-feeder agreement* or, where applicable, the internal conduct of business rules, available to *unitholders* free of charge on their request.

[Note: article 60(1) first paragraph last sentence, second and third paragraphs, article 61(1) second paragraph, article 62(1) second paragraph and article 64 third paragraph of the *UCITS Directive*]

11.3.3 G Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in ■ COLL 11 Annex 1 R and ■ COLL 11 Annex 2 R to *COLL rules* that implemented provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as referring to the corresponding provisions in the laws and regulations of that *EEA State*.

11.3.4 G In relation to the requirements in ■ COLL 11 Annex 1 R(3) and ■ Annex 2R(2), where the dealing arrangements between a *master UCITS* and a *feeder UCITS* do not differ from those applying to all non-*feeder UCITS unitholders* of the *master UCITS*, the *master-feeder agreement* or the internal conduct of business rules do not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the *prospectus* of the *master UCITS*.

[Note: recital (8) to the *UCITS implementing Directive No 2*]

Law applicable to the master-feeder agreement

11.3.5 R (1) Where the *feeder UCITS* and the *master UCITS* are *UCITS schemes*, the *master-feeder agreement* must provide that the law of a specified part of the *United Kingdom* applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the *United Kingdom*.

(2) Where the *master UCITS* is established in an *EEA State*, the *master-feeder agreement* must provide that the applicable law shall be UK law,

and that both parties agree to the exclusive jurisdiction of the courts of the *UK*.

[Note: article 14 of the *UCITS implementing Directive No 2*]

11.3.5A R (1) Where paragraph (2) applies a *master-feeder agreement* that is effective prior to *IP completion day* need not comply with ■ COLL 11.3.5R(2).

- (2) This paragraph applies where the applicable law of the *master-feeder agreement* was:
 - (a) UK law before *IP completion day*, and remains so; or
 - (b) the law of the *EEA State* in which the *master UCITS* was established before *IP completion day*, and remains so.

Avoidance of opportunities for market timing

- 11.3.6 **R** (1) The *authorised fund managers* of a *master UCITS* and its *feeder UCITS* must take appropriate measures to co-ordinate the timing of their net asset value calculation and publication, including the publication of *dealing prices*, in order to avoid market timing in their *units*, preventing arbitrage opportunities.
- (2) Where the *master UCITS* is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[Note: article 60(2) of the *UCITS Directive*]

Obligations of the feeder UCITS

- 11.3.7 **R** (1) An *authorised fund manager* of a *feeder UCITS* must monitor effectively the activity of the *master UCITS*.
- (2) In performing this obligation, the *authorised fund manager* of the *feeder UCITS* may rely on information and *documents* received from the *master UCITS*, or where applicable, the *master UCITS' management company, depositary* or auditor, unless there is a reason for doubting their accuracy.

[Note: article 65(1) of the *UCITS Directive*]

Inducements

- 11.3.8 **R** Where, in connection with an investment in the *units* of the *master UCITS*, a distribution fee, commission or other monetary benefit is received by:
 - (1) a *feeder UCITS*; or
 - (2) an *authorised fund manager* of a *feeder UCITS*; or
 - (3) any *person* acting on behalf of (1) or (2);that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder UCITS*.

[Note: article 65(2) of the *UCITS Directive*]

Obligations of the master UCITS

- 11.3.9 **R** The *authorised fund manager* of a *master UCITS* must immediately inform the *FCA* of the identity of each *feeder UCITS* which invests in its *units*.

[Note: article 66(1) first sentence of the *UCITS Directive*]

11.3.10 **G** [deleted]

- 11.3.11 **R**
- (1) An authorised fund manager of a master UCITS must not impose any preliminary charge or redemption charge on the feeder UCITS for the issue, sale, redemption or cancellation of units in the master UCITS.
 - (2) Where the authorised fund manager of a master UCITS requires any addition to or deduction from the consideration paid on the acquisition or disposal of units by a feeder UCITS which is, or is like, a dilution levy made in accordance with ■ COLL 6.3.8 R (Dilution), it is to be treated as part of the price of the units and not as part of any charge.

[Note: article 66(2) of the UCITS Directive]

11.3.12 **R** An authorised fund manager of a master UCITS must ensure the timely availability of all information that is required in accordance with its obligations under the regulatory system, the general law and the instrument constituting the fund, to:

- (1) the feeder UCITS (or where applicable its management company);
- (2) the FCA;
- (3) the depositary of the feeder UCITS; and
- (4) the auditor of the feeder UCITS.

[Note: article 66(3) of the UCITS Directive]

Obligations to Unitholders of a master UCITS

11.3.13 **R** The authorised fund manager of a UCITS scheme that operates, or intends to operate, as a master UCITS must:

- (1) not enter into a master-feeder agreement or, where applicable, internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) unless it is satisfied on reasonable grounds that the arrangements with the feeder UCITS will not unfairly prejudice the interests of any other unitholder or class of unitholders in the master UCITS;
- (2) consider, in relation to:
 - (a) each item of information it makes available to the feeder UCITS or its management company; and
 - (b) each matter notified by the depositary of the master UCITS in accordance with ■ COLL 11.4.3 R (Notification of irregularities);

whether it would unfairly prejudice the interests of those unitholders in the master UCITS other than the feeder UCITS by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and

11.3.14

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- (3) in relation to any matter within (2)(b) where it does not notify other *unitholders* at the same time:
 - (a) record the grounds for determining that the interests of those *unitholders* are not unfairly prejudiced by its decision; and
 - (b) inform all *unitholders* of that matter in an appropriate manner and timescale.

- (1) The appropriate manner and timescale of notification referred to in ■ COLL 11.3.13R (2) and ■ (3)(b) will depend on the nature and significance of the matter. Consequently, the *authorised fund manager* will need to assess each matter individually.

- (2) An appropriate manner of notification could include sending an immediate notification to the *unitholders*, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.

- (3) Where ■ COLL 11.3.13R (3)(b) applies, it might be appropriate to include the information in the next long report of the *scheme*.

11.4 Depositaries

Information-sharing agreement between depositaries

11.4.1

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- (1) An authorised fund manager of a feeder UCITS is responsible for communicating to the *depositary* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depositary's* regulatory obligations.
- (2) Where a *master UCITS* and its *feeder UCITS* have different *depositaries*, the *depositaries* must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[Note: article 61(1) first and fourth paragraphs of the *UCITS Directive*]

Contents of the information-sharing agreement between depositaries

11.4.2

R

- (1) The information-sharing agreement referred to in ■ COLL 11.4.1R (2) must include:
 - (a) identification of the *documents* and categories of information which are to be routinely shared between both *depositaries*, and whether that information or those *documents* are provided by one *depositary* to the other or made available on request;
 - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depositary* of the *master UCITS* to the *depositary* of the *feeder UCITS*;
 - (c) the co-ordination of the involvement of both *depositaries*, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
 - (i) the procedure for calculating the net asset value of each *scheme*, including any measures appropriate to protect against the activities of market timing in accordance with ■ COLL 11.3.6 R (Avoidance of opportunities for market timing);
 - (ii) the processing of instructions by the *feeder UCITS* to purchase, subscribe or request the repurchase or *redemption* of *units* in the *master UCITS*, and the settlement of those transactions, including any arrangement to transfer assets in kind;
 - (d) the co-ordination of accounting year-end procedures;

(e) what details the *depository* of the *master UCITS* must provide to the *depository* of the *feeder UCITS* of breaches by the *master UCITS* of the law and the *instrument constituting the fund* and how and when those details will be provided;

(f) the procedure for handling ad hoc requests for assistance from one *depository* to the other; and

(g) identification of particular contingent events which ought to be notified by one *depository* to the other on an ad hoc basis, and how and when this will be done.

(2) Where a *master-feeder agreement* exists in accordance with ■ COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that *UK law* applies to that agreement, and both *depositories* agree to the exclusive jurisdiction of the *UK courts* in relation to that agreement.

(3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that *UK law* applies to that agreement, and both *depositories* agree to the exclusive jurisdiction of the *UK courts* in relation to that agreement.

[Note: articles 24 and 25 of the *UCITS implementing Directive No 2*]

11.4.2A **R**

(1) Where paragraph (2) applies, an *information-sharing agreement* between the *depositories* that is effective prior to *IP completion day* need not comply with ■ COLL 11.4.2R.

(2) This paragraph applies where the applicable law of the *information sharing agreement* between the *depositories* was:

(a) *UK law* before *IP completion day*, and remains so; or

(b) the law of a given *EEA State* before *IP completion day*, and remains so.

Notification of irregularities

11.4.3 **R**

(1) Where a *depository* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depository* must immediately inform:

(a) the *FCA*;

(b) the *feeder UCITS* or, where applicable, its *management company*; and

(c) the *depository* of the *feeder UCITS*.

(2) The irregularities referred to in (1) include, but are not limited to:

(a) errors in the valuation of the *scheme property* performed in accordance with ■ COLL 6.3.3 R (Valuation);

- (b) errors in transactions for or settlement of the *sale, issue, repurchase or redemption of units* in the *scheme* undertaken by the *feeder UCITS*;
- (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
- (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the fund*, the *prospectus* or the *key investor information*; and
- (e) breaches of investment and borrowing limits set out in *COLL*, the *instrument constituting the fund*, the *prospectus* or the *key investor information*.

[Note: article 61(2) of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No 2*]

11.4.4

G

- (1) When notifying the *FCA* of any irregularities in accordance with ■ *COLL 11.4.3R (1)*, the *depository* of the *master UCITS* should also inform the *depository* of the *feeder UCITS* how the *master UCITS* or its *authorised fund manager* has resolved or proposes to resolve the irregularity.
- (2) Where the *depository* of a *UCITS scheme* that is a *feeder UCITS* is informed by the *depository* of a *master UCITS* of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the *directors*.

[Note: recital (16) to the *UCITS implementing Directive No 2*]

Disclosure by a trustee or depository

11.4.5

G

Section 351A (Disclosure under the *UCITS directive*) of the *Act* provides that where a *trustee* of an *AUT* or the *depository* of an *ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.



11.5 Auditors

Information-sharing agreement between auditors

11.5.1 **R** Where a *master UCITS* and a *feeder UCITS* have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with ■ COLL 11.5.3 R and ■ COLL 11.5.4 R (Preparation of the audit report).

[Note: article 62(1) first paragraph of the *UCITS Directive*]

Contents of the information-sharing agreement between auditors

- 11.5.2 **R**
- (1) The information-sharing agreement referred to in ■ COLL 11.5.1 R must include:
 - (a) identification of the *documents* and categories of information which are to be routinely shared between both auditors;
 - (b) whether the information or *documents* referred to in (a) are to be provided by one auditor to the other or made available on request;
 - (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the *master UCITS* to the auditor of the *feeder UCITS*;
 - (d) the co-ordination of the involvement of each auditor in the accounting year-end procedures for their respective *scheme*;
 - (e) identification of matters that must be treated as irregularities and disclosed in the audit report for the *master UCITS* for the purposes of ■ COLL 11.5.3R (2);
 - (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the *master UCITS*; and
 - (g) provisions regarding the preparation of the audit reports referred to in ■ COLL 11.5.3 R and ■ COLL 4.5.12 R (Report of the auditor) and the manner and timing for the provision of the audit report for the *master UCITS* (and drafts of it) to the auditor of the *feeder UCITS*.
 - (2) Where the *feeder UCITS* and the *master UCITS* have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the *master*

UCITS is to make the ad hoc report as required by ■ COLL 11.5.4 R and to provide it (and drafts of it) to the auditor of the *feeder UCITS*.

- (3) Where a *master-feeder agreement* exists in accordance with ■ COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that *UK law* applies to that agreement, and both auditors agree to the exclusive jurisdiction of the *UK courts* in relation to that agreement.
- (4) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that *UK law* applies to that agreement, and both auditors agree to the exclusive jurisdiction of the *UK courts* in relation to that agreement.

[Note: articles 27 and 28 of the *UCITS implementing Directive No 2*]

11.5.2A R

- (1) An *information-sharing agreement* between the auditors that is effective prior to *IP completion day* need not comply with ■ COLL 11.5.2R.
- (2) This paragraph applies where the applicable law of the *information-sharing agreement* between the auditors was:
 - (a) *United Kingdom law* before *IP completion day*, and remains so; or
 - (b) the law of a given *EEA State* before *IP completion day*, and remains so.

Preparation of the audit report

11.5.3 R

When preparing its audit report, the auditor of a *feeder UCITS* must:

- (1) take into account the audit report of the *master UCITS*; and
- (2) report on any irregularities revealed in the audit report of the *master UCITS* and their impact on the *feeder UCITS*.

[Note: article 62(2) first paragraph first sentence and second paragraph of the *UCITS Directive*]

11.5.4 R

Where a *master UCITS* and one or more of its *feeder UCITS* have different accounting years, the auditor of the *master UCITS* must make an ad hoc report on the closing date of the accounting year of each *feeder UCITS*.

[Note: article 62(2) first paragraph second sentence of the *UCITS Directive*]

Disclosure by an auditor

11.5.5 G

Section 351A of the *Act* provides that where an auditor of an *AUT* or *ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for auditors of *ICVCs* that are *feeder UCITS* and *master UCITS*.

Responsibility of authorised fund managers

11.5.6

R

The *authorised fund managers* of a *master UCITS* and a *feeder UCITS* must ensure that the terms on which auditors of their respective *schemes* are appointed require each auditor to comply with the *rules* in this section.

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1

G

- (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the Act, provide that where a *master UCITS* is wound up, for whatever reason, the FCA is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depository* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) the FCA approves under section 283A (Master-feeder structures) of the Act the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of another *master UCITS*; or
 - (b) the FCA approves under section 252A or section 261S (Proposal to convert to a non-feeder UCITS) of the Act an amendment of the *trust deed* or *contractual scheme deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A(3) and (4) and section 261Z(3) and (4) of the Act further provide that where a *master UCITS* merges with another *UCITS* or is divided into two or more *UCITS*, the FCA is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depository* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) the FCA approves under section 283A of the Act the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of:
 - (i) the *master UCITS* which results from the merger;
 - (ii) one of the *UCITS* resulting from the division; or
 - (iii) another *UCITS* or *master UCITS*; or
 - (b) the FCA approves under section 252A or section 261S of the Act an amendment of the *trust deed* or *contractual scheme deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (3) The *OEIC Regulations* (see regulations 33A and 33B respectively) contain corresponding provisions for *feeder UCITS* which are structured as *ICVCs*.

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

- 11.6.2** **R** (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and the *FCA* informing it of the binding decision to wind up the *master UCITS*.
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding the compulsory liquidation of *AUTs*, *ACSSs* or *ICVCs*.

[Note: article 60(4) last sentence of the *UCITS Directive*]

Application for approval by a feeder UCITS where a master UCITS is wound up

11.6.3 **R** Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that its *master UCITS* is to be wound up, it must submit to the *FCA* the following:

- (1) where the *authorised fund manager* of the *feeder UCITS* intends to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS*:
- (a) its application for approval under section 283A of the *Act* for that investment;
 - (b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act*, section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) or regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* of any proposed amendments to its *instrument constituting the fund*;
 - (c) the amendments to its *prospectus* and its *key investor information* in accordance with **COLL 4.2.3 R (1)(b)** (Provision and filing of the prospectus) and **COLL 4.7.7 R (1)** (Revision and filing of key investor information); and
 - (d) the other *documents* required in accordance with **COLL 11.2.2 R** (Application for approval of an investment in a master UCITS);
- (2) where the *authorised fund manager* of the *feeder UCITS* intends to convert it into a *UCITS scheme* that is not a *feeder UCITS*:
- (a) its application for approval under section 252A or section 261S of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to its *instrument constituting the fund*; and
 - (b) the amendments to its *prospectus* and its *key investor information* in accordance with **COLL 4.2.3 R (1)(b)** and **COLL 4.7.7 R (1)**; and
- (3) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 or section 261Q of

the Act or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[Note: article 20(1) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: winding up of a master UCITS

11.6.4

R

- (1) The information in ■ COLL 11.6.3 R must be submitted no later than two *months* after the date on which the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up.
- (2) By way of derogation from (1), where the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up more than five *months* before the date at which the winding up will start, the *authorised fund manager* must submit the information to the *FCA* at the latest three *months* before the day the winding up will start.

[Note: article 20(1) first sentence and article 20(2) of the *UCITS implementing Directive No 2*]

Application for approval by a feeder UCITS where a master UCITS merges or divides

11.6.5

R

Where the *authorised fund manager* of a *UCITS* scheme that is a *feeder UCITS* is notified that the *master UCITS* is to merge with another *UCITS* scheme or *EEA UCITS* scheme or divide into two or more such schemes, it must submit to the *FCA* the following:

- (1) where the *authorised fund manager* of the *feeder UCITS* intends it to continue to be a *feeder UCITS* of the same *master UCITS*:
 - (a) its application under section 283A of the *Act*, for approval;
 - (b) where applicable, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the fund*; and
 - (c) where applicable, the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);
- (2) where the *authorised fund manager* of the *feeder UCITS* intends it to become a *feeder UCITS* of another *master UCITS* resulting from the proposed merger or division of the *master UCITS*, or intends the *feeder UCITS* to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS* not resulting from the merger or division:
 - (a) its application under section 283A of the *Act* for approval of that investment;
 - (b) where applicable, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the fund*;

- (c) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);
 - (d) the other *documents* required in accordance with ■ COLL 11.2.2 R;
- (3) where the *authorised fund manager* of the *feeder UCITS* intends it to convert into a *UCITS scheme* that is not a *feeder UCITS*:
- (a) its application for approval under section 252A or section 261S of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to the *instrument constituting the fund*; and
 - (b) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1); and
- (4) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[Note: article 22(1) of the *UCITS implementing Directive No 2*]

Interpretation of COLL 11.6.5R

11.6.6

R

- (1) For the purposes of ■ COLL 11.6.5R (1), a *feeder UCITS* will be considered as continuing to be a *feeder UCITS* of the same *master UCITS* where:
- (a) the *master UCITS* is the *receiving UCITS* in a proposed *UCITS merger*; or
 - (b) the *master UCITS* is to continue materially unchanged as one of the resulting *UCITS schemes* or *EEA UCITS schemes* in a proposed division.
- (2) For the purposes of ■ COLL 11.6.5R (2), a *feeder UCITS* will be considered as becoming a *feeder UCITS* of another *master UCITS* resulting from the merger or division of the *master UCITS* where:
- (a) the *master UCITS* is the *merging UCITS* and, as a result of the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
 - (b) the *feeder UCITS* as a result of the division becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* that is materially different to the *master UCITS*.

[Note: article 22(2) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: merger or division of a master UCITS

11.6.7

R

- (1) The information in ■ COLL 11.6.5 R must be submitted to the *FCA* no later than one *month* after the date on which the *authorised fund manager* of the *feeder UCITS* has received the information of the planned merger or division in accordance with regulation 13(6) of the *UCITS Regulations 2011*.

- (2) By way of derogation from (1), where the *master UCITS* provides the information referred to in, or comparable with, ■ COLL 7.7.10 R (Information to be given to Unitholders) to the *authorised fund manager* of the *feeder UCITS* more than four *months* before the proposed effective date of the merger or division of the *master UCITS*, the *authorised fund manager* must submit the information to the *FCA* at least three *months* before the proposed effective date.

[Note: article 22(1) first sentence and article 22(3) of the *UCITS implementing Directive No 2*]

Repurchase or redemption of units in a master UCITS

11.6.8

G

Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *UK master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FCA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

11.6.9

R

- (1) Where:
- (a) the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ COLL 11.6.5R (2) and ■ (3); and
 - (b) does not receive the necessary approvals from the *FCA* by the *business day* preceding the last *day* on which the *authorised fund manager* of the *feeder UCITS* can request repurchase or *redemption* of its *units* in the *master UCITS*;
- the *authorised fund manager* of the *feeder UCITS* must exercise the right to repurchase or *redeem* its *units* in the *master UCITS* under regulation 12(4) of the *UCITS Regulations 2011*.
- (2) The *authorised fund manager* of the *feeder UCITS* must also exercise the right in (1) to ensure that the right of its own *unitholders* to request repurchase or *redemption* in the *feeder UCITS* in accordance with ■ COLL 4.8.3 R (1)(d) (Information to be provided to Unitholders) is not affected.
- (3) Before exercising the right in (1), the *authorised fund manager* of the *feeder UCITS* must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own *unitholders*.
- (4) Where the *authorised fund manager* of the *feeder UCITS* requests repurchase or *redemption* in accordance with (1), it must receive one of the following:
- (a) the repurchase or *redemption* proceeds in cash; or
 - (b) some or all of the repurchase or *redemption* proceeds as a transfer in kind, where the *authorised fund manager* of the *feeder UCITS* so wishes and where its *instrument constituting the fund* and the *master-feeder agreement* provide for it.

- (5) Where (4)(b) applies, the *authorised fund manager* of the *feeder UCITS* may realise any part of the transferred assets for cash at any time.

[Note: articles 23(4) and 23(5) of the *UCITS implementing Directive No 2*]

Conditions on reinvestment of cash

11.6.10

R

Where:

- (1) the *FCA* approves an application under sections 283A (Master-feeder structures), 252A or 261S (Proposal to convert to a non-feeder *UCITS*) of the *Act* or regulation 22A of the *OEIC Regulations* that arises as a result of the winding-up, merger or division of the *master UCITS* (other than an application pursuant to ■ COLL 11.6.5R (1)); and
- (2) the *authorised fund manager* of the *feeder UCITS* holds or receives cash in accordance with ■ COLL 11.6.9R (4) or as a result of a winding-up;

the *authorised fund manager* may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the *feeder UCITS* invests in *units* of the *master UCITS* in accordance with ■ COLL 11.3.2R (3) (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[Note: article 23(6) of the *UCITS implementing Directive No 2*]

11.6.11

G

■ COLL 11.6.10 R gives effect to sections 283A(4), 252A(8) and 261S(8) of the *Act* and regulation 22A(4) of the *OEIC Regulations* which require the *FCA* to impose certain conditions when approving the re-investment of cash received from a *master UCITS* which has been wound up.

Requirements following approval by the FCA

11.6.12

R

Where the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ COLL 11.6.3R (1), ■ COLL 11.6.3R (2), ■ COLL 11.6.5R (1), ■ COLL 11.6.5R (2) or ■ COLL 11.6.5R (3) and has received written notice of any required approvals from the *FCA*, it must:

- (1) inform the *master UCITS* of those approvals; and
- (2) in the case of the required approvals received in respect of *documents* submitted under ■ COLL 11.6.3 R (1) and ■ COLL 11.6.5 R (2), take the necessary measures to comply with the requirements of ■ COLL 4.8.3 R as soon as possible.

[Note: articles 21(2), 21(3), 23(2) and 23(3) of the *UCITS implementing Directive No 2*]

Notification by feeder UCITS of intention to be wound up

11.6.13

R

Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FCA* under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* that it intends to wind up the *scheme*, it must inform:

- (1) the *unitholders* of the *feeder UCITS*; and
- (2) where notice is given under ■ COLL 11.6.5R (4) (Application for approval by a feeder UCITS where a master UCITS merges or divides), the *authorised fund manager* of the *master UCITS*;

of its intention without undue delay.

[**Note:** articles 20(3) and 22(4) of the *UCITS implementing Directive No 2*]

Contents of the standard master-feeder agreement

This table belongs to the *rule* on the conclusion and prescribed content of a standard *master-feeder agreement* (■ COLL 11.3.2R (1)).

- (1) Provisions related to access to information by a *master UCITS* and a *feeder UCITS*:
- (a) how and when the *master UCITS* provides the *feeder UCITS* with a copy of its *instrument constituting the fund, prospectus* and *key investor information* or any amendment of them;
 - (b) how and when the *master UCITS* informs the *feeder UCITS* of a delegation of investment management and risk management functions to third parties in accordance with COLL 6.6.15AR;
 - (c) where applicable, how and when the *master UCITS* provides the *feeder UCITS* with internal operational documents, such as its risk management process and its compliance reports;
 - (d) what details of breaches by the *master UCITS* of;
 - (i) the law;
 - (ii) the *instrument constituting the fund*; and
 - (iii) the *master-feeder agreement*;
 must be notified to the *feeder UCITS* and the manner and timing thereof;
 - (e) where a *feeder UCITS* uses *derivatives* for hedging purposes, how and when the *master UCITS* will provide the *feeder UCITS* with information about its actual exposure to *derivatives* to enable the *feeder UCITS* to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and
 - (f) a statement that the *master UCITS* must inform the *feeder UCITS* of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the *master UCITS* makes those other information-sharing arrangements available to the *feeder UCITS*.

[Note: article 8 of the *UCITS implementing Directive No 2*]

- (2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:
- (a) a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*;
 - (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
 - (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 9 of the *UCITS implementing Directive No 2*]

- (3) Provisions related to standard dealing arrangements:
- (a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of *units*;
 - (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, including, where applicable, the role of transfer agents or any other third party;
 - (c) where applicable, any arrangements necessary to take account of the fact that the *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;

- (d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*;
- (g) procedures to ensure enquiries and complaints from *unitholders* are handled appropriately; and
- (h) where the *instrument constituting the fund* and prospectus of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 10 of the *UCITS implementing Directive No 2*]

- (4) Provisions related to events affecting dealing arrangements:
- (a) the manner and timing of a notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
 - (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 11 of the *UCITS implementing Directive No 2*]

- (5) Provisions related to the standard arrangements for the audit report:
- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
 - (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 12 of the *UCITS implementing Directive No 2*]

- (6) Provisions related to changes to the standing arrangements:
- How and when notice is to be given:
- (a) by the *master UCITS* of proposed and effective amendments to its *instrument constituting the fund*, *prospectus* and *key investor information*, if these details differ from the standard arrangements for notification of *unitholders* laid down in the *instrument constituting the fund* or *prospectus* of the *master UCITS*;
 - (b) by the *master UCITS* of a planned or proposed winding up, *merger* or division;
 - (c) by either the *feeder UCITS* or the *master UCITS* that it has ceased or will cease to meet the qualifying conditions to be a *feeder UCITS* or a *master UCITS* respectively;
 - (d) by either the *feeder UCITS* or the *master UCITS* that it intends to replace its *management company*, its *depository*, its auditor or any third party which is mandated to carry out investment management or risk management functions; and
 - (e) by the *master UCITS* of other changes to standing arrangements that it undertakes to provide.

[Note: article 13 of the *UCITS implementing Directive No 2*]

Contents of the internal conduct of business rules

This table belongs to the *rule* on the conclusion and prescribed content of the internal conduct of business rules (■ COLL 11.3.2R (2)).

- (1) Provisions related to conflicts of interest
- (a) The internal conduct of business rules referred to in COLL 11.3.2R (2) must include appropriate measures to mitigate conflicts of interest that may arise between:
- (i) the *feeder UCITS* and the *master UCITS*; or
 - (ii) the *feeder UCITS* and other *unitholders* of the *master UCITS*;
- to the extent that these are not sufficiently addressed by the measures applied by the *management company* in order to meet the requirements of the provisions listed in (b).
- (b) The provisions referred to in (a) are:
- (i) SYSC 10.1.4 R (Types of conflicts);
 - (ii) SYSC 10.1.6 R (Record of conflicts);
 - (iii) SYSC 10.1.10 R (Conflicts policy);
 - (iv) SYSC 10.1.11 R (Contents of policy);
 - (v) SYSC 10.1.17 R (Additional requirements for a management company);
 - (vi) SYSC 10.1.19 R (Structure and organisation of a management company);
 - (vii) SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);
 - (viii) SYSC 10.1.21 R (Disclosure of conflicts for a management company); and
 - (ix) COLL 6.6A.6 R (Strategies for the exercise of voting rights);
- or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the *UCITS Directive* and Chapter III of the *UCITS implementing Directive*.

[Note: article 15 of the *UCITS implementing Directive No 2*]

- (2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:
- (a) a statement of which *classes* of *units* of the *master UCITS* are available for investment by the *feeder UCITS*;
 - (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
 - (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 16 of the *UCITS implementing Directive No 2*]

- (3) Provisions related to standard dealing arrangements:
- (a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of *units*;
 - (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, including, where applicable, the role of transfer agents or any other third party;
 - (c) where applicable, any arrangements necessary to take account of the fact that *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;

- (d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*; and
- (g) where the *instrument constituting the fund* and *prospectus* of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 17 of the *UCITS implementing Directive No 2*]

(4) Provisions related to events affecting dealing arrangements:

- (a) the manner and timing of notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
- (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 18 of the *UCITS implementing Directive No 2*]

(5) Provisions related to the standard arrangements for the audit report:

- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
- (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 19 of the *UCITS implementing Directive No 2*]

Chapter 12

Management company and product passports under the UCITS Directive [deleted]

Chapter 13

Operation of feeder NURS

13.1 Introduction

Application

13.1.1

R

This chapter applies to:

- (1) the *authorised fund manager* of a *feeder NURS*;
- (2) an *ICVC* that is a *feeder NURS*;
- (3) the *authorised fund manager* of a *UCITS scheme* or *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*; and
- (4) (in the case of **■** COLL 13.2.6 R (Inducements) only) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*.

Purpose

13.1.2

G

This chapter sets out various obligations, additional to those found elsewhere in the *Handbook*, that *persons* listed in **■** COLL 13.1.1 R must comply with in relation to the operation of a *feeder NURS* and its *qualifying master scheme*.



13.2 Operational requirements for feeder NURS

Application

13.2.1

R

This section applies as follows:

- (1) ■ COLL 13.2.2 R to ■ COLL 13.2.6 R apply to the *authorised fund manager* of a *feeder NURS*;
- (2) ■ COLL 13.2.6 R also applies to:
 - (a) an *ICVC* that is a *feeder NURS*; and
 - (b) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*; and
- (3) ■ COLL 13.2.7 R applies to the *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*.

Pre-investment requirements of the authorised fund manager of a feeder NURS

13.2.2

R

Before investing in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must:

- (1) be satisfied on reasonable grounds that the *authorised fund manager* can obtain from the *qualifying master scheme* all the information necessary to comply on an ongoing basis with the *rules* in *COLL*;
- (2) having consulted with the *depository* of the *feeder NURS*, be satisfied on reasonable grounds that the *depository* of the *feeder NURS* can obtain from the *qualifying master scheme*, the *operator* of the *qualifying master scheme* or the *depository* of the *qualifying master scheme* all the information necessary to comply with its duties under ■ COLL 6.6.4 R (General duties of the depository); and
- (3) where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, inform the *authorised fund manager* of the *qualifying master scheme* of the date on which the *feeder NURS* will begin to invest into the *qualifying master scheme* as a *feeder NURS*.

Ownership of units in a feeder NURS

13.2.3 **R** The *authorised fund manager* of a *feeder NURS* must take reasonable care to ensure that its *units* are not owned, including beneficially owned, by the *qualifying master scheme*.

Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

13.2.4 **R**

(1) Where the *operator* of a *qualifying master scheme* or the *authorised fund manager* of a *qualifying master scheme* imposes any charge which is, or is equivalent in effect to, a *preliminary charge* or *redemption charge* on the *feeder NURS* for the acquisition or disposal of *units* in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must pay to the *feeder NURS* an amount equal to such *charge* within four *business days* following the relevant acquisition or disposal.

(2) In this *rule*, where the *operator* of a *qualifying master scheme* or *authorised fund manager* of a *qualifying master scheme* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master scheme* which is, or is equivalent in effect to, a *dilution levy* made in accordance with ■ COLL 6.3.8 R (Dilution), it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

Avoidance of opportunities for market timing

13.2.5 **R** The *authorised fund manager* of a *feeder NURS* must take appropriate measures to co-ordinate the timing of the *feeder NURS*' net asset value calculation and publication with those of its *qualifying master scheme*, including the publication of *dealing prices*, in order to avoid market timing of their *units*, and prevent arbitrage opportunities.

Inducements

13.2.6 **R** Where, in connection with an investment in the *units* of the *qualifying master scheme*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder NURS*; or
- (2) an *authorised fund manager* of a *feeder NURS*; or
- (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder NURS* within four *business days* of receipt of that *fee*, commission or other monetary benefit.

Obligations to Unitholders of a qualifying master scheme

13.2.7 **R** Where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, the *authorised fund manager* of the *qualifying master scheme* must

not, if it would unfairly prejudice the interests of *unitholders* of the *qualifying master scheme* other than the *feeder NURS*, provide or make available information to the *authorised fund manager* of the *feeder NURS* without at the same time also providing or making available that information to the *unitholders* of the *qualifying master scheme* other than the *feeder NURS*.

Chapter 14

Charity authorised investment funds

14.1 Introduction

Application

14.1.1

R

This chapter applies to:

- (1) an *authorised fund manager of a charity authorised investment fund*;
- (2) an *ICVC that is a charity authorised investment fund*;
- (3) the *depository of a charity authorised investment fund*; and
- (4) the *authorised fund manager and the depository of an authorised fund that was previously registered as a charity with the Charity Commission*.

Purpose

14.1.2

G

This chapter sets out modifications to the *rules and guidance* in this sourcebook for *authorised fund managers and depositories of charity authorised investment funds*.

Types of charity authorised investment fund

14.1.3

R

- (1) A *charity authorised investment fund* may be:
 - (a) a *UCITS scheme*; or
 - (b) a *non-UCITS retail scheme*;
 - (c) a *qualified investor scheme*; or
 - (d) a *long-term asset fund*.
- (2) A *charity authorised investment fund* may be structured as:
 - (a) an *authorised unit trust (AUT)*; or
 - (b) an *investment company with variable capital (ICVC)*; or
 - (c) an *authorised contractual scheme (ACS)*.



14.2 Registration with the Charity Commission

14.2.1 **R** The *authorised fund manager* of a *charity authorised investment fund* must notify the *FCA* without undue delay when it receives its registration as a charity from the Charity Commission.

14.2.2 **R** The *authorised fund manager* and the *depository* of an *authorised fund* that was previously registered as a charity with the Charity Commission must notify the *FCA* without undue delay when it ceases to be registered as a charity with the Charity Commission.

14.3 Advisory committee

- 14.3.1** **G** A *charity authorised investment fund* may have an advisory committee which is independent from the *authorised fund manager* and the *depository* if the advisory committee has a consultative function only.
- 14.3.2** **R** If the *charity authorised investment fund* has an advisory committee the *authorised fund manager* must ensure that:
- (1) the *instrument constituting the fund* sets out the role and responsibilities of the advisory committee; and
 - (2) the *prospectus* contains at least the following information about the advisory committee:
 - (a) a description of its role and responsibilities;
 - (b) its membership;
 - (c) how its members are nominated and how their membership is terminated; and
 - (d) how meetings are called and operated, including the quorum.
- 14.3.3** **R** If the *charity authorised investment fund* has an advisory committee, the *authorised fund manager* must ensure that on the request of the committee, the *scheme's* annual long report includes a statement prepared and approved by the committee.
- 14.3.4** **G** The statement may address matters such as:
- (1) how the advisory committee is discharging its role and responsibilities as set out in the *instrument constituting the fund*;
 - (2) any observations the committee may have on how the *authorised fund manager* has carried out its functions during the *annual accounting period*; and
 - (3) any other matters the committee considers of interest to the *unitholders* of the *charity authorised investment fund*.
- 14.3.5** **R** (1) The *authorised fund manager* or *depository* must convene a general meeting of *unitholders* if it receives a notice from the advisory committee of a *charity authorised investment fund* which:

- (a) states the objects of the meeting;
- (b) is dated; and
- (c) is signed by or on behalf of the advisory committee.

(2) The *authorised fund manager* or the *depository* must ensure the general meeting of the *authorised fund* takes place no later than eight weeks after receipt of the notice in (1).

14.3.6

R

The *authorised fund manager* and *depository* of a *charity authorised investment fund* must keep records of any dealings with an advisory committee for at least five calendar years.

14.4 Income allocation and distribution

Income reserve account

- 14.4.1** **R** As an exception to ■ COLL 6.8.3R(3) (Income allocation and distribution), a *charity authorised investment fund* is not required to transfer income to a *distribution account* where this is allowed by ■ COLL 14.4.2R.
- 14.4.2** **R**
- (1) The *authorised fund manager* and the *depository* of a *charity authorised investment fund* may establish an income reserve account for the *scheme* if this is provided for in:
 - (a) the *instrument constituting the fund*; and
 - (b) the *prospectus*.
 - (2)
 - (a) The *authorised fund manager* may instruct the *depository* to transfer up to 15% of the income available for allocation or distribution on an *annual income allocation date* to the income reserve account.
 - (b) Any income transferred under (a) remains part of the *income property* of the *scheme* but is not available for allocation or distribution.
 - (c) The transfer in (a) must be for the sole purpose of avoiding fluctuations in the income available for allocation or distribution for the *annual accounting period*.
 - (3) The *authorised fund manager* may instruct the *depository* to transfer income in the income reserve account to the *income account*.
 - (4) The *authorised fund manager* and the *depository* must treat:
 - (a) any income transferred from the income reserve account to the *income account* as income available for allocation or distribution at the next *annual income allocation date*; and
 - (b) any interest or other amounts earned on the income in the income reserve account as income due to the *scheme*.
- 14.4.3** **R** The *authorised fund manager* of a *charity authorised investment fund* with an income reserve account must not allow a payment that has been allocated to *income property* in the first instance to be made from the *capital account* if that payment could be met, in whole or in part, by transferring income from the income reserve account to the *income account*.

- 14.4.4 **R**
- (1) ■ COLL 14.4.1R ceases to apply if the *scheme* commences winding up or termination in accordance with:
 - (a) ■ COLL 7.3.6R (Consequences of commencement of winding up or termination) for an *ICVC*; or
 - (b) ■ COLL 7.4.3R (When an *AUT* is to be wound up or a sub-fund terminated) for an *AUT*; or
 - (c) ■ COLL 7.4A.4R (When an *ACS* is to be wound up or a sub-fund of a co-ownership scheme terminated) for an *ACS*.
 - (2) Any income in the income reserve account must be transferred to the *income account* as soon as practicable after the winding up or termination commences.

Total return approach

- 14.4.5 **R**
- (1) The *authorised fund manager* and *depository* of a *charity authorised investment fund* may adopt a total return approach to the allocation or distribution of income where this is provided for in:
 - (a) the *instrument constituting the fund*; and
 - (b) the *prospectus*.
 - (2) Under a total return approach the *authorised fund manager* may make transfers between the *capital account* and the *income account* in addition to those in ■ COLL 6.8.3R(3A)(c).
 - (3) The *authorised fund manager* and *depository* must ensure that any transfer under a total return approach:
 - (a) is solely for the purpose of meeting the pre-determined target amount disclosed in the *prospectus* in accordance with ■ COLL 14.4.6R(1); and
 - (b) is consistent with the explanation given in the *prospectus* in accordance with ■ COLL 14.4.6R(2).

- 14.4.6 **R**
- If the *charity authorised investment fund* has adopted a total return approach to the allocation or distribution of income, the *authorised fund manager* must ensure that the *prospectus* contains:
- (1) the pre-determined target of the income available for allocation or distribution in any *annual accounting period*; and
 - (2) an explanation of how the target amount is consistent with the investment objective and policy and the distribution policy of the *scheme*.

Chapter 15

Long-term asset funds

15.1 Introduction

Application

15.1.1

R

- (1) This chapter applies to:
- (a) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
 - (b) any other *director* of an *ICVC*;
 - (c) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
 - (d) an *ICVC*,
- which is a *long-term asset fund*.
- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *long-term asset funds*.

Purpose

15.1.2

G

- (1) This chapter assists in achieving the *statutory objective* of securing an appropriate degree of protection for *consumers* in respect of *authorised funds* that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) A *long-term asset fund* is essentially a type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*. The *FCA* expects the investment strategy of an *LTAf* to be to invest at least 50% of the *scheme property* of an *LTAf* in assets that are illiquid and need to be held over the longer term.
- (3) In comparison to *qualified investor schemes*, *long-term asset funds* have greater flexibility in their investment powers. Therefore, to assist the *FCA* in achieving the *statutory objective* of securing an appropriate degree of protection for *consumers*, this chapter balances this additional flexibility by placing other requirements on the *authorised fund managers* and *depositories* of *LTAfs*.
- (4) This chapter ceases to apply where a *long-term asset fund* has converted to be authorised as a *UCITS scheme*, a *non-UCITS retail scheme* or a *qualified investor scheme*.

Long-term asset funds: eligible investors

15.1.3

R

- (1) Subject to (3), the *authorised fund manager* of a *long-term asset fund* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments).
- (2) In addition to (1), the *authorised contractual scheme manager* of a *long-term asset fund* which is an ACS must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that meets the criteria set out in ■ COLL 15 Annex 1R (ACS Long-term asset funds: eligible investors).
- (3) The *authorised fund manager* will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.
- (4) Where:
 - (a) the *scheme* is intended only for *limited protection LTAF investors* or the *scheme* has a *limited protection LTAF class*; and
 - (b) ■ COLL 15.5.-10BR to ■ COLL 15.5.-10EG, ■ COLL 15.5.-12BR, ■ COLL 15.7.-12BR, and ■ COLL 15.8.15EG to ■ COLL 15.8.15PR have not been applied in relation to the *scheme* or the *limited protection LTAF class*,

the *authorised fund manager* must also take reasonable care to ensure that ownership of *units* in the *scheme* or *class* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor*.

Long-term asset funds - explanation

15.1.4

G

- (1) *Long-term asset funds* are *authorised funds* which are subject to a restriction on promotion. They are intended only for *professional clients* and for *retail clients* who are sophisticated investors, *certified high net worth investors*, and those *retail clients* to whom *long-term asset funds* may be promoted without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments).
- (2) The *authorised contractual scheme manager* of a *long-term asset fund* which is an ACS must take reasonable care to ensure that it accepts subscription to *units* in the *LTAF* only from a *person* to whom such *units* may be promoted without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments) and who also meets the criteria in ■ COLL 15 Annex 1R.
- (3) (a) Some of the *rules* in ■ COLL 15 relating to:
 - (i) alterations to *schemes*, notices to *unitholders* and change events for *feeder LTAFs* (see ■ COLL 15.5.-10BR to ■ COLL 15.5.-10DR);
 - (ii) *unitholder* meetings (see ■ COLL 15.5.-12BR);
 - (iii) the *register* (see ■ COLL 15.7.-12BR); and
 - (iv) payments (■ COLL 15.8.15CR to ■ COLL 15.8.15PR),

apply where the *scheme* or (where applicable) a particular *class* of *unit* is made available to *retail clients* who are not *limited protection LTAF investors* (an *LTAF retail class*).

- (b) These *rules* may also be applied to a *scheme* or *class* that is intended only for *limited protection LTAF investors*. Where the *rules* are not applied in relation to such a *scheme* or a *class*, the *authorised fund manager* is required under ■ COLL 15.1.3R(4) to take reasonable care to ensure that ownership of *units* in the *scheme* or *class* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor*.

Application and notification procedures

15.1.5

G

Details of the application procedures in respect of *long-term asset funds* are contained in ■ COLL 2.1 (Authorised fund applications). Further information is available on the *FCA* website at www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-authorisation.

15.2 Eligibility to act as the authorised fund manager

Application

- 15.2.1 **R** This section applies to:
- (1) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
 - (2) any other *director* of an *ICVC*;
 - (3) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
 - (4) an *ICVC*,
- which is a *long-term asset fund*.

Authorised fund manager to be a full-scope UK AIFM

- 15.2.2 **R** The *authorised fund manager* of a *long-term asset fund* must be a *full-scope UK AIFM*.
- 15.2.3 **G**
- (1) To ensure an appropriate degree of *consumer* protection, only a *full-scope UK AIFM* is able to act as the *authorised fund manager* for an *LTAf*.
 - (2) *Full-scope UK AIFMs* that manage *authorised AIFs* are subject to the requirements of both *COLL* and *FUND*, and must also comply with any other applicable provisions of the *UK AIFM regime*, including the *AIFMD level 2 regulation* and the *AIFMD UK regulation*. *Small authorised UK AIFMs* are subject to a more limited set of *rules* and requirements.

Competence and resources of the authorised fund manager

- 15.2.4 **R**
- (1) The *authorised fund manager* of a *long-term asset fund* must, having regard to the investment objectives, policy and strategy of the *LTAf*:
 - (a) possess the knowledge, skills and experience necessary to understand the activities of the *LTAf* and, in particular, the risks involved in those activities and the assets which the *LTAf* holds (or is to hold) in the *scheme property*; and
 - (b) employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.

- (2) The *authorised fund manager* may not rely on a delegation or outsourcing arrangement to satisfy (1).

15.2.5 **R** The *authorised fund manager* of a long-term asset fund must at all times be able to demonstrate to the FCA that it complies with ■ COLL 15.2.4R.

[Note: Article 22 of the AIFMD level 2 regulation.]

Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets

15.2.6 **R** (1) The *authorised fund manager* of a long-term asset fund must appoint an *external valuer* to perform the valuation function for the LTAf, but this is subject to (2) and (5).

- (2) The *authorised fund manager* need not appoint an *external valuer* under (1) if:

- (a) the *authorised fund manager* possesses the knowledge, skills and experience necessary to be able to carry out a proper and independent valuation of the assets and types of assets which the long-term asset fund holds or is to hold (see ■ FUND 3.9.4R); and
- (b) the *depository* of the long-term asset fund, having made an assessment of the matters in (a), has determined that the *authorised fund manager* has the resources and procedures for carrying out a valuation of those assets in accordance with the applicable law, the *instrument constituting the fund* and ■ FUND 3.9 (Valuation).

- (3) The *depository* must:

- (a) review its determination under (2)(b):
- (i) regularly, and in any event at least annually; and
 - (ii) whenever the *depository* becomes aware of any circumstances which could affect the determination;
- (b) for a period of six years, keep a written record of its determination under (2)(b) and any review under (3)(a), and the reasons for the assessment; and
- (c) provide the FCA with a copy of the written record on request.

- (4) Where the *authorised fund manager* performs the valuation function itself in accordance with (2), the *authorised fund manager* may appoint, as applicable:

- (a) for the purpose of valuing immovables in accordance with ■ COLL 15.6.18R (Investment in property), an *appropriate valuer*;
- (b) for the purpose of valuing immovables in accordance with ■ COLL 15.6.22R (Standing independent valuer and valuation), a *standing independent valuer*;
- (c) for the purpose of valuing an asset other than an immovable or property, a delegate appointed in accordance with ■ FUND 3.10 (Delegation) and the relevant provisions of section 8 (Delegation of AIFM functions) of Chapter III of the AIFMD level 2 regulation.

- (5) The *authorised fund manager* need not appoint an *external valuer* under (1) if:
- (a) the *scheme property* of the *long-term asset fund* is constituted solely of *units* or *shares* in other *collective investment schemes* or *AIFs*; and
 - (b) an *external valuer* performs the valuation function of each such *collective investment scheme* or *AIF*.

[**Note:** ■ FUND 3.9 (Valuation), ■ FUND 3.10 (Delegation), ■ FUND 3.11.25R (Depositary functions: oversight), article 19(5) of *AIFMD*, and articles 67 to 74 (Valuation) and article 94(4) (Duties regarding the valuation of shares/units) of the *AIFMD level 2 regulation*.]

15.2.7 **G** Where an *authorised fund manager* appoints an *external valuer* under ■ COLL 15.2.6R(1) certain additional requirements apply. For example, ■ FUND 3.9.7R(3) (Performance of the valuation function) sets certain conditions relating to the independence of the *external valuer*, and the *authorised fund manager* will also need to be able to demonstrate the matters set out in ■ FUND 3.9.9R (Appointment of external valuer). The *AIFMD level 2 regulation* contains further requirements that apply to the *authorised fund manager* where an *external valuer* is used. Certain requirements also apply to the *external valuer* and the *depositary* of an *LTAf* with an *external valuer*.

[**Note:** Articles 67 to 74 and article 94(4) of the *AIFMD level 2 regulation*.]

15.2.8 **R** The *governing body* of the *authorised fund manager* of a *long-term asset fund* must:

- (1) possess the collective knowledge, skills and experience to be able to understand the *authorised fund manager's* activities, in particular, the main risks involved in those activities and the assets in which the *long-term asset fund* is invested;
- (2) have members that commit sufficient time to properly perform their functions in the *authorised fund manager*; and
- (3) have members that act with honesty, integrity and independence of mind.

[**Note:** Article 21 of the *AIFMD level 2 regulation*.]

15.2.9 **G**

- (1) In order to establish whether an *authorised fund manager* of a *long-term asset fund* conducts its activities honestly, fairly and with due skills, the *FCA* is required to assess various matters, including those set out in articles 21 and 22 of the *AIFMD level 2 regulation*. In addition, under ■ COLL 15.2.4R, the *authorised fund manager* must possess the knowledge, skills and experience necessary to understand the activities of the *LTAf* and, in particular, the risks involved in those activities and the assets which the *LTAf* holds (or is to hold) in the *scheme property* without relying on delegation arrangements to satisfy the requirement.
- (2) The *authorised fund manager* of a *long-term asset fund* is subject to various other requirements relating to its governance arrangements;

its organisational structure; the skills, knowledge, expertise and competence of those it employs; and its obligation to act honestly, fairly and with due skill, care and diligence. See for example the *rules* in ■ SYSC 4 (General organisational requirements), ■ SYSC 5 (Employees, agents and other relevant persons) and ■ COBS 2.1 (Acting honestly, fairly and professionally).

- (3) The *authorised fund manager* of a *long-term asset fund* should also note the organisational requirements set out in the *AIFMD level 2 regulation*; for example, article 57 (General requirements).

15.3 Constitution

Application

- 15.3.1 **R** This section applies to an *authorised fund manager* of a *long-term asset fund*.

Classes of unit

- 15.3.2 **R** A *long-term asset fund* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

Names of schemes, sub-funds, and classes of units

- 15.3.3 **R**
- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
 - (2) The *authorised fund manager* of a *long-term asset fund* must include the term 'long-term asset fund' or 'LTAF' in the name of the *scheme* and in relation to any *sub-fund* which is also a *long-term asset fund*.

Undesirable and misleading names

- 15.3.4 **G**
- (1) ■ COLL 6.9.6G (Undesirable and misleading names) contains *guidance* as to names which may be undesirable or misleading.
 - (2) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for a *long-term asset fund* whose *authorised fund manager* operates, or proposes to operate, it in accordance with the *rules* in this chapter.
 - (3) [deleted]

Instrument constituting the fund

- 15.3.5 **R**
- (1) The statements and provisions required by ■ COLL 15.3.6R must be included in the *instrument constituting the fund* of a *long-term asset fund*.
 - (2) The *instrument constituting the fund* must not contain any provision that conflicts with any applicable *rule*.

15.3.6

R

Table: contents of the instrument constituting the fund

This table belongs to ■ COLL 15.3.5R.

1 Description of the authorised fund

Information detailing:

- (1) the name of the *authorised fund*;
- (2) that the *authorised fund* is a *long-term asset fund*;
- (3) in the case of an *ICVC*, whether the head office of the *company* is situated in England and Wales, Wales, Scotland or Northern Ireland.

2 Property Authorised Investment FundsFor a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the *scheme*; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the *scheme*, the *authorised fund manager* is entitled to delay any *redemption* or *cancellation* of *units* in accordance with 8 if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.

3 Constitution

The following statements:

- (1) the *scheme property* of the *scheme* is entrusted to a *depository* for safekeeping (subject to any exception permitted by the *rules*);
- (2) if relevant, the duration of the *scheme* is limited and, if so, for how long;
- (3) charges and expenses of the *scheme* may be taken out of *scheme property*;
- (4) for an *ICVC*:
 - (a) what the maximum and minimum sizes of the *scheme's* capital are; and
 - (b) the *unitholders* are not liable for the debts of the *company*;
- (5) for an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
- (6) for a *co-ownership scheme* which is an *umbrella*, the property subject to a *sub-fund* is beneficially owned by the participants in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*;
- (7) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;

- (8) for an *AUT*:
- (a) the *trust deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if that *person* had been a party to it, and that the *unitholder* is bound by its provisions; and
 - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
 - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
 - (i) the *scheme property* (other than sums held to the credit of the *distribution account*) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply them in accordance with COLL 15.8.18R (Income);
 - (c) a *unitholder* is not liable to make any further payment after having paid the *price* of the *units* held, and that no further liability can be imposed on the *unitholder* in respect of those *units*; and
 - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (9) for an *ACS*:
- (a) the *contractual scheme deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if that *person* had been a party to it, and that the *unitholder* is bound by its provisions;
 - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
 - (iv) states that *units* may not be *issued* to a *person* other than a *person*:
 - (A) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (B) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments);
 - (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone

- (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
- (vi) states that for a *co-ownership scheme*:
- (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
 - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
 - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) of the *Act*;
- (vii) states:
- (A) whether the transfer of *units* in the *ACS scheme* or, for a *co-ownership scheme* which is an *umbrella (sub-funds of which pursue differing policies in relation to transfer of units)*, in each particular *sub-fund*, is either:
 - (i) prohibited; or
 - (ii) allowed;
 - (B) where a transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:
 - (i) who is a:
 - (1) *professional ACS investor*; or
 - (2) *large ACS investor*; or
 - (3) *person* who already holds *units* in the *scheme*; and
 - (ii) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments); and
- (viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;
- (b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the *Act* (Contractual scheme rules) and for the time being in force:
- (i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 15.8.18R (Income); and

- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after having paid the price of the *units* held, and that no further liability can be imposed on the *unitholder* in respect of those *units*;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
 - (i) acquire, manage and dispose of the *scheme property*; and
 - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

4 Investment objectives

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

5 Units in the scheme

A statement of:

- (1) the *classes* of *units* which the *scheme* may issue, indicating, for a *scheme* which is an *umbrella*, which *class* or *classes* may be issued in respect of each *sub-fund*; and
- (2) the rights attaching to *units* of each *class* (including any provisions for the expression in two denominations of such rights).

6 Limitation on issue of and redemption of units

- (1) Details as to:
 - (a) the provisions relating to any restrictions on the right to *redeem units* in any *class*; and
 - (b) the circumstances in which the *issue* of the *units* of any particular *class* may be limited.
- (2) A statement setting out the *dealing* frequency for *sales* and *redemptions* of *units* in the *scheme*, and the applicable *notice period* for *redemptions*.
- (3) Where COLL 15.1.3R(4) (Long-term asset funds: eligible investors) applies, a statement that the *authorised fund manager* must take reasonable care to ensure that ownership of *units* in the *scheme* or a relevant *class* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor*.

7 Income and distribution

Details of the *person* responsible for the calculation, transfer, allocation and distribution of income for any *class* of *unit* in *issue* during the accounting period.

8 Redemption or cancellation of units on breach of law or rules

A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an in-

fringement of any law, governmental regulation or rule, those *units* must be *redeemed* or *cancelled*.

9 Base currency

A statement of the *base currency* of the *scheme*.

10 Meetings

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for *unitholders*.

11 Powers and duties of the authorised fund manager and depositary

Where relevant, details of any function to be undertaken by the *authorised fund manager* and *depositary* which the *rules* in *COLL* require to be stated in the *instrument constituting the fund*.

12 Termination and suspension

Details of:

- (1) the grounds under which the *authorised fund manager* may initiate a suspension of the *scheme* and any associated procedures; and
- (2) the methodology for determining the rights of *unitholders* to participate in the *scheme property* on winding up.

13 Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

14 Other relevant matters

Details of those matters which enable the *scheme*, *authorised fund manager* or *depositary* to obtain any privilege or power conferred by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

Limited issue

15.3.7

R

Units whose *issue* may be limited can only be *issued* if permitted by the *instrument constituting the fund*, under the conditions set out in the *prospectus* and provided that this will not materially prejudice any existing *unitholders* in the *scheme*.

15.4 Prospectus and other pre-sale notifications

Application

15.4.1

R

This section applies to:

- (1) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*; and
- (2) an *ICVC*,
which is a *long-term asset fund*.

Drawing up and availability of a prospectus

15.4.2

R

- (1) An *authorised fund manager* must ensure that a *prospectus* of a *long-term asset fund* is drawn up which contains:
 - (a) the information specified in ■ COLL 15.4.5R (Table: contents of long-term asset fund prospectus);
 - (b) the information for investors required by ■ FUND 3.2.2R and ■ FUND 3.2.3R (Prior disclosure of information to investors); and
 - (c) the information for investors required by ■ FUND 3.2.5R and ■ FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the *scheme's* most recent annual report or half-yearly report.
- (2) An *authorised fund manager* must:
 - (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
 - (b) include the date of any revision in a prominent manner in the revised *prospectus*;
 - (c) send a copy of the original and any revised *prospectus* to the *FCA*; and
 - (d) review the *prospectus* periodically and revise it to take account of any significant change or new matter.
- (3) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (4) The *authorised fund manager* must ensure that the *prospectus* does not contain any provision that conflicts with any applicable *rule*.

15.4.3

G

(5) An *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *long-term asset fund*, prior to the purchase of any *units*.

(1) The information specified in ■ COLL 15.4.5R (Table: contents of long-term asset fund prospectus) includes the provisions specified in ■ FUND 3.2.2R(1) to ■ 3.2.2R(12) and ■ 3.2.2R(16), as well as certain additional pieces of information. A 'Note' indicates whether the information is derived from ■ FUND 3.2.2R.

(2) The *authorised fund manager* of an *LTAF* will also need to comply with ■ FUND 3.2.2R by providing investors with the information specified in ■ FUND 3.2.2R(13) to ■ 3.2.2R(15) and ■ 3.2.2R(17).

False or misleading prospectus

15.4.4

R

The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

Table: contents of a long-term asset fund prospectus

15.4.5

R

This table belongs to ■ COLL 15.4.2R.

1 Document status

A statement that this document is the *prospectus* of the *authorised fund* valid as at a particular date which shall be the date of the *document*.

2 Description of the authorised fund

Information detailing:

- (1) the name of the *authorised fund*;
- (2) its *FCA* product reference number (*PRN*);
- (3) that the *authorised fund* is either an *ICVC*, *ACS* or an *AUT*;
- (4) that the *scheme* is a *long-term asset fund*;
- (5) where relevant, that the *shareholders* in an *ICVC* are not liable for the debts of the *authorised fund*;
- (6) where relevant, the address of the *ICVC's* head office and the address in the *United Kingdom* for service on the *ICVC* of documents required or authorised to be served on it;
- (7) the effective date of the *authorisation order* made by the *FCA* and, if the duration of the *authorised fund* is not unlimited, when it will or may terminate;
- (8) the *base currency* for the *authorised fund*;
- (9) where relevant, the maximum and minimum sizes of the *ICVC's* capital;
- (10) for an *ACS* that is a *limited partnership scheme*, the address of the proposed principal place of business of the *limited partnership scheme*; and
- (11) a description of the other main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the ex

istence or absence of any legal instruments providing for the recognition and enforcement of judgments.

[Note: FUND 3.2.2R(3).]

3 Investment objectives, policy and strategy

The following particulars, which must be set out fairly, clearly and in plain language:

- (1) Information to enable a *unitholder* to ascertain:
 - (a) the investment objectives of the *authorised fund*;
 - (b) the *authorised fund's* investment policy for achieving those investment objectives, including:
 - (i) the general nature of the portfolio and any intended specialisation;
 - (ii) the policy for providing a prudent spread of risk in the *scheme property*; and
 - (iii) the policy in relation to the exercise of powers to borrow cash and use leverage, including:
 - (A) the purposes for which cash borrowing and leverage may be used;
 - (B) the nature of the cash borrowing, including whether it is short- or long-term, temporary or otherwise;
 - (C) the types and sources of leverage permitted and the associated risks;
 - (D) any restrictions on the use of leverage and any *collateral* and asset reuse arrangements;
 - (E) the maximum level of leverage which the *authorised fund manager* is entitled to employ on behalf of the *LTAf*;
 - (F) an explanation of how and why that is compatible with the objectives of the *LTAf*;
 - (c) whether there are any restrictions in the assets which may be held in the *scheme property*; and
 - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) A description of the investment strategy of the *long-term asset fund* which must comply with COLL 15.6.6R (Long-term asset funds: investment strategy).

[Note: FUND 3.2.2R(1)(a), FUND 3.2.2R(1)(f) and FUND 3.2.2R(1)(g) to 3.2.2R(1)(j).]

4 Feeder LTAFs

If the *LTAf* is a *feeder LTAf*:

- (1) the name and (where applicable) the *FCA* product reference number (PRN) of the *qualifying master LTAf*;
- (2) the country or territory where the *qualifying master LTAf* is established; and
- (3) the following details of the *qualifying master LTAf*:
 - (a) its investment objective, policy and strategy, including its risk profile;

- (b) the minimum and (if relevant) maximum investment that the *feeder LTAF* may make in it;
- (c) how copies of its *prospectus* may be obtained;
- (d) how the *unitholders* of the *feeder LTAF* may obtain further information about it; and
- (e) a description of all *remuneration* or reimbursement of costs payable by the *feeder LTAF* by virtue of its investment in *units* of the *qualifying master LTAF*, as well as the aggregate charges of the two *schemes*.

[Note: FUND 3.2.2R(1)(b).]

5 Fund of funds

If the *LTAF* is a *fund of funds*, information on where the underlying *funds* are established.

[Note: FUND 3.2.2R(1)(c).]

6 Assets in which the LTAF may invest

A description of the types of assets in which the *LTAF* may invest, including, where relevant:

- (1) for investment in immovables:
 - (a) the countries or territories in which the *authorised fund* may invest in immovables;
 - (b) the *authorised fund manager's* policy in relation to insuring any immovables which form part of the *scheme property*; and
 - (c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.
- (2) if intended, whether the *scheme property* may consist of *units* in *collective investment schemes* ("*second schemes*") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as to:
 - (a) the basis of the maximum amount of the charges in respect of transactions in a *second scheme*; and
 - (b) the extent to which any such charges will be reimbursed to the *scheme*;
- (3) if intended, whether the *scheme* may enter into *stock lending* arrangements and *repo* contracts and, if so, what procedures will operate and what *collateral* will be required.

[Note: FUND 3.2.2R(1)(d).]

7 Investment techniques and associated risks

At least the following information, which must be set out fairly, clearly and in plain language, about the investment techniques that the *authorised fund manager* may employ and all associated risks, including:

- (1) having regard to the investment strategy of the *long-term asset fund* and the type of assets in which the *scheme* may invest, an explanation of the risks associated with the *scheme* investing in those assets and how those risks might crystallise;
- (2) any other risks for *unitholders* investing in the *long-term asset fund*;
- (3) a description of the tools and arrangements the *authorised fund manager* would propose using, including those required by *rules*, to mitigate the risks referred to in (1) and (2); and

- (4) an explanation of the circumstances in which those tools and arrangements would typically be deployed and the likely consequences for investors.

[Note: FUND 3.2.2R(1)(e).]

8 Procedures to change of strategy or policy

A description of the procedures by which the *authorised fund manager* of the *LTAf* may change its investment objective and policy or its investment strategy, or both.

[Note: FUND 3.2.2R(2).]

9 Classes of units

Information as to:

- (1) the names of the *classes of units* in *issue* or available for issue and the rights attached to them in so far as they vary from the rights attached to other *classes*;
- (2) how *unitholders* may exercise their voting rights and what these are; and
- (3) the circumstances where a mandatory *redemption*, *cancellation* or conversion of *units* from one *class* to another may be required.

[Note: FUND 3.2.2R(3), (8), (9), (11) and (12).]

10 Identity and duties of the authorised fund manager, depositary, auditor and other service providers, and investors' rights

- (1) The following particulars of the *authorised fund manager*:
 - (a) its name and the nature of its corporate form;
 - (b) the country or territory of its incorporation;
 - (c) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
 - (d) if it is a *subsidiary*, the name of its ultimate *holding company* and the country or territory in which that *holding company* is incorporated;
 - (e) the address of its registered office, its head office, and, if different, the address of its principal place of business in the *United Kingdom*;
 - (f) the amount of its issued share capital and how much of it is paid up;
 - (g) for an *ICVC*, a summary of the material provisions of the contract between the *ICVC* and the *authorised fund manager* which may be relevant to *unitholders* including provisions (if any) relating to termination, compensation on termination and indemnity;
 - (h) the names of the *directors* of the *authorised fund manager*; and
 - (i) a description of the duties of the *authorised fund manager*.
- (2) Where the *LTAf* is an *ICVC*, other than for the *ACD*:
 - (a) the names and positions in the *ICVC* of the *directors*; and
 - (b) the manner, amount and calculation of the *remuneration* of the *directors*.
- (3) The following particulars of the *depositary*

- (a) its name and the nature of its corporate form;
 - (b) the country or territory of its incorporation;
 - (c) the address of its registered office and the address of its head office if that is different from the address of its registered office;
 - (d) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*; and
 - (e) a description of the duties of the *depository*.
- (4) If an *investment adviser* or any other *person* is retained to provide services in connection with the business of the *authorised fund*:
- (a) the name of the *person*;
 - (b) whether or not the *person* is authorised by the *FCA*; and
 - (c) a description of the duties of the *person*.
- (5) The name of the auditor of the *authorised fund* and a description of the duties of the auditor.

[Note: FUND 3.2.2R(4).]

11 Professional liability

A description of how the *authorised fund manager* complies with the requirements referred to in IPRU-INV 11.3.11G (Professional negligence) relating to professional liability risk.

[Note: FUND 3.2.2R(5).]

12 Delegation arrangements

To the extent not covered by (10), a description of:

- (1) any *AIFM management function* delegated by the *authorised fund manager*;
- (2) any safe-keeping function delegated by the *depository*;
- (3) the identity of each delegate appointed under FUND 3.10 (Delegation); and
- (4) any conflicts of interest that may arise from such delegation.

[Note: FUND 3.2.2R(6).]

13 Valuation of scheme property and due diligence

- (1) A statement setting out whether the valuation function is performed by an *external valuer* or the *authorised fund manager* and:
 - (a) where an *external valuer* is used to perform the valuation function, an explanation of how that *person* meets the requirements set out in FUND 3.9.7R(3) (Performance of the valuation function) and the relevant requirements in articles 67 to 74 of the *AIFMD level 2 regulation*, and how the *authorised fund manager* is able to demonstrate the matters specified in FUND 3.9.9R (Appointment of an external valuer) and FUND 3.10.2R(2)(f) (General delegation requirements); or
 - (b) where the *authorised fund manager* performs the valuation function itself, details of the *depository's* determination of the matters referred to in COLL 15.2.6R(2) (Appointment of external valuer or *authorised fund manager* with knowledge, skills and experience of valuing long-term assets).

- 2 A description of the valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets, in line with FUND 3.9 (Valuation), and details as to:
- (a) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or *redeemed* by the *authorised fund manager* and a description of any circumstance where the *scheme property* may be specially valued;
 - (b) in relation to each purpose for which the *scheme property* must be valued and each category of asset held in the *scheme property*, the basis on which it will be valued, identifying any codes of good practice used by the *external valuer* (where relevant) or the *authorised fund manager*; and
 - (c) how the *price* of *units* of each *class* will be determined, including a statement that a *forward price* basis is to be applied.
- (3) Details as to:
- (a) the *authorised fund manager's* policies and procedures in relation to the selection and ongoing monitoring of investments (see article 18(2) of the *AIFMD level 2 regulation*);
 - (b) the arrangements for ensuring that investment decisions on behalf of the *long-term asset fund* are carried out in compliance with the objectives and the investment strategy of the *scheme* (see article 18(3) of the *AIFMD level 2 regulation*);
 - (c) how the *authorised fund manager* will carry out due diligence in line with good market practice.

[Note: FUND 3.2.2R(7).]

[Note 2: Articles 67 to 71 of the *AIFMD level 2 regulation* contain detailed requirements relating to the valuation of assets by *full-scope UK AIFMs*. Articles 18 and 19 of the *AIFMD level 2 regulation* also contain detailed requirements relating to the due diligence obligations of *full-scope UK AIFMs*.]

14 Fees, charges and expenses

A description of all fees, charges and expenses, including:

- (1) the maximum amounts directly or indirectly borne by investors;
- (2) the payments that may be made out of the *scheme property* to any *person* whether by way of *remuneration* for services, reimbursement of expense, or charge or other payment and for each category of *remuneration*, expense, charge or payment the following should be specified:
 - (a)
 - (i) the *person* to whom the *remuneration*, charge, expense or payment is payable or made;
 - (ii) what that payment is for;
 - (iii) the current rates or amounts of such *remuneration*, charge, expense or payment;
 - (iv) how the *remuneration*, charge, expense or payment will be calculated;
 - (v) when it will be paid;

- (vi) where a performance fee is taken, whether by the *authorised fund manager* or any other *person* providing services to the *authorised fund manager* or the *long-term asset fund* in relation to the operation of the *scheme*, examples of how the performance fee works in plain English and the maximum it can amount to; and
 - (vii) where donations are to be made to one or more *registered charities* for Sharia compliance purposes from the *income property* of the *scheme* (in this *rule*, 'purification'), in addition to the details required above, the *person* who advises the *authorised fund manager* on the required percentage of the *income property* recognised for purification;
- (b) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
- (i) introduce a new category of *remuneration* for its services;
 - (ii) increase the basis of any current charge; or
 - (iii) change the basis of the treatment of a payment from the *capital property* set out in COLL 15.8.15JR (Allocation of payments to income or capital) and COLL 15.8.15QR(2) (Payments: limited protection LTAF classes) (as applicable),
- particulars of that introduction or increase and when it will take place; and
- (c) if, in accordance with COLL 15.8.15JR (Allocation of payments to income or capital) and COLL 15.8.15QR(2) (Payments: limited protection LTAF classes) (as applicable), all or part of the *remuneration* or expense are to be treated as a capital charge:
- (i) that fact; and
 - (ii) the basis of the charge which may be so treated; and
- (3) if the *authorised fund manager* makes any charges on *sale* or *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

[Note: FUND 3.2.2R(9).]

[Note 2: Annex VI of the onshored Commission Delegated Regulation (EU) 2017/653 laying down regulatory technical standards with regard to the presentation, content, review and revision of *key information documents*, sets out detailed requirements in relation to the costs to be disclosed in a *key information document*.]

15 Fair treatment of investors and investor rights

- (1) A description of how the *authorised fund manager* ensures a fair treatment of investors.
- (2) Whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of:
 - (a) that preferential treatment;
 - (b) the type of investors who obtain such preferential treatment; and
 - (c) where relevant, their legal or economic links with the *LTAF* or the *authorised fund manager*.
- (3) A description of the rights of investors.

[Note: FUND 3.2.2R(4), FUND 3.2.2R(10) and FUND 3.2.2R(11).]

16 Dealing

The procedure and conditions for the *issue, sale, redemption and cancellation of units or shares* including details of the following, in fair, clear and plain language, using worked examples to explain how these procedures might apply to *unitholders* in practice:

- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive and determine requests for the *sale and redemption of units*, including any cut-off point for receiving *redemption* requests before the *authorised fund manager* makes the next *redemption determination* (see COLL 15.8.12R(2)(a) (Dealing: redemption of units));
- (2) the procedures for effecting the *issue and cancellation of units*;
- (3) the procedures for effecting the *sale and redemption of units* and the settlement of transactions;
- (4) the steps required to be taken by a *unitholder* in redeeming *units* in the *long-term asset fund* (see COLL 15.8.12R (Dealing: redemption of units)), using worked examples to explain how these arrangements may affect *unitholders* in the *scheme*, including:
 - (a) the *notice period*, and the normal period that *unitholders* will need to wait from the *authorised fund manager* accepting a *unitholder's* instruction to *redeem units* in the *LTAF* to payment of the appropriate proceeds of *redemption* to the *unitholder*;
 - (if applicable) the circumstances and periods where:
 - (i) the execution of a *redemption* request may be deferred;
 - (ii) payment may be deferred; or
 - (iii) a limit on the amount that can be *redeemed* may be applied, and
if so, the effect on the *unitholder* of such a deferral or limit (see COLL 15.8.12R(6) (Dealing: redemption of units));
 - (c) that the notice period may be extended when the *scheme* is suspended in accordance with COLL 15.10.3R (Suspension); and
 - (d) that once the *authorised fund manager* has accepted a *unitholder's* request to *redeem units* in the *LTAF* it is irrevocable and they will not be able to withdraw that request;
- (5) a description of the *LTAF's* liquidity risk management, including how an investor's ability to *redeem units* in the *LTAF* may be affected in exceptional circumstances, and the circumstances in which the *redemption of units* may be suspended;
- (6) the *days and times* in the *day* on which recalculation of the *price* will commence;
- (7) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
 - (a) any one *person* may hold; and
 - (b) may be the subject of any one transaction of *sale or redemption*;
- (8) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption of units* in specie;
- (9) the circumstances in which the further *issue of units* in any particular *class* may be limited and the procedures relating to this;

- (10) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *depository* of an *AUT* or *ACS* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*;
- (10A) (where COLL 15.1.3R(4) (Long-term asset funds: eligible investors) applies) a statement that the *authorised fund manager* must take reasonable care to ensure that ownership of *units* in the *scheme* or a relevant *class* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor*;
- (11) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer;
- (12) if the *authorised fund manager* deals as principal in *units* of the *scheme* and holds them for that purpose, a statement of its policy for doing so and, where applicable:
 - (a) a description of when the *authorised fund manager* may retain any profits it earns and absorb any losses it incurs for these activities; and
 - (b) a statement of non-accountability as referred to in COLL 15.8.17G; and
- (13) any other features relating to *dealing* in *units* in the *scheme* which *unitholders* would reasonably expect to be aware of, including (but not limited to):
 - (a) any minimum periods for which *unitholders* must hold *units* in any *class* of the *scheme*;
 - (b) any limits or caps on the number or value of *units* in any *class* that a *unitholder* may *redeem*, whether on one occasion or over a period of time;
 - (c) whether the *scheme* may use side-pockets, and if so the procedures for their use,
 using worked examples to explain the effects or consequences that these features may have on *unitholders* in the *scheme*.

[Note: FUND 3.2.2R(8).]

17 Issue of units in ACSs: eligible investors

- (1) A statement that *units* may not be *issued* to a *person* other than to a *person*:
 - (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments).
- (2) A statement that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

[Note: FUND 3.2.2R(12).]

18 Transfer of units in ACSs

- (1) A statement whether the transfer of *units* in the *ACS scheme* is either:

- (a) prohibited; or
 - (b) allowed;
- by the *instrument constituting the fund and prospectus*.
- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund and prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person*:
- (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments).
- (3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

[Note: FUND 3.2.2R(12).]

19 Prime brokerage firms

- (1) The identity of any *prime brokerage firm*.
- (2) A description of any material arrangements of the *LTAf* with its *prime brokerage firm* and the way any conflicts of interest are managed.
- (3) The provision in the contract with the *depository* on the possibility of transfer and reuse of the *scheme property* of the *LTAf*.
- (4) Information about any transfer of liability to the *prime brokerage firm* that may exist.

[Note: FUND 3.2.2R(16).]

20 Distributions and accounting dates

Relevant details of accounting and distribution dates and a description of the procedures:

- (1) for determining and applying income (including how any distributable income is paid); and
- (2) relating to unclaimed distributions.

21 The register of unitholders

Details of the address in the *United Kingdom* where the *register of unitholders* is kept and can be inspected by *unitholders*.

22 Property Authorised Investment Funds

For a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the *scheme*; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the *scheme*, the *authorised fund manager* is entitled

to delay any *redemption* or *cancellation* of *units* if the *authorised fund manager* reasonably considers such action to be:

- (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
- (b) in the interests of the *unitholders* as a whole.

23 General information

Details as to:

- (1) when annual and half-yearly reports will be published; and
- (2) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

24 Winding up of the LTAF

Information detailing the circumstances in which the *authorised fund* may be wound up under the *rules* in *COLL* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up.

25 Information on the umbrella

In the case of a *scheme* which is an *umbrella*, the following information:

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption* and *sale*;
- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*;
- (5) the circumstances in which a *sub-fund* may be terminated under the *rules* in *COLL* and a summary of the procedures for, and the rights of *unitholders* under, such a termination;
- (6) for an *ICVC* or a *co-ownership scheme*, that:
 - (a) for an *ICVC*, its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
 - (b) for a *co-ownership scheme*, the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the participants in that *sub-fund*; and
 - (c) for an *ICVC* or a *co-ownership scheme*, while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law con*

tracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*; and

- (7) the *FCA* product reference number (PRN) of each *sub-fund*.

26 Application of the prospectus contents to an umbrella

For a *scheme* which is an *umbrella*, information required must be stated:

- (1) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (2) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

27 Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement:

- (1) disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles*; and
- (2) confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* is to enable the holding of overseas immovables by the *scheme*.

28 Information on authorised contractual schemes

A statement that:

- (1) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after having paid the price of the *units* held and that no further liability can be imposed on the *unitholder* in respect of those *units*;
- (2) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (3) the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business; and
- (4) the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*).

28A Sustainability information

The following information, as appropriate:

- (1) where a *sustainability label* is used in relation to a *scheme*, the information set out at ESG 5.3.3R and ESG 5.3.6R, in accordance with ESG 5.3.2R(1); and
- (2) where a *sustainability label* is not used in relation to a *scheme*, but that *scheme* uses the terms in ESG 4.3.2R(2) under ESG 4.3.2R(1) the information required under ESG 5.3.2R(2).

29 Additional information

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund manager* would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably ex-

pect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by participating.

Additional information to be made available on securities financing transactions and total return swaps

15.4.6

G

(1) The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* of a *long-term asset fund* must make available to investors before they invest.

■ COLL 4.2.5BUK and ■ COLL 4.2.5CUK copy out the relevant provisions of that regulation.

An *authorised fund manager* of a *long-term asset fund* should publish the information in the *prospectus*.

An *authorised fund manager* of a *long-term asset fund* that does not use *securities financing transactions* or *total return swaps* is not required to include the information in ■ COLL 4.2.5CUK in the *prospectus* or other pre-sale documents.

Preparation of key information document in accordance with the PRIIPs regulation

15.4.7

G

(1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP* to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).

(2) The requirements of the *PRIIPs Regulation* form part of UK law by virtue of the *EUWA*.

(3) As a result, when a *long-term asset fund* is made available to *retail clients*, the *authorised fund manager* in the *United Kingdom* must comply with the *PRIIPs Regulation* and will need to prepare a *key information document* in accordance with the *PRIIPs Regulation*, in addition to the *prospectus*.

15.5 Annual report and investor relations

Application

15.5.1

R

This section applies to:

- (1) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*; and
- (2) an *ICVC*,
which is a *long-term asset fund*.

Report and accounts

15.5.2

R

- (1) The *authorised fund manager* must prepare a report in respect of each *annual accounting period*, *half-yearly accounting period* and *quarterly reporting period*.
- (2) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (3) The *authorised fund manager* must:
 - (a) publish the annual report not more than four *months* after the end of each relevant *annual accounting period*;
 - (b) publish the half-yearly report not more than two *months* after the end of each relevant *half-yearly accounting period*; and
 - (c) publish the quarterly report not more than 20 *business days* after the end of each relevant *quarterly reporting period*,
and in each case provide a copy free of charge on request to any *unitholder*.
- (4) The *authorised fund manager* must provide free of charge, on the request of any *person* eligible to invest in the *scheme*, a copy of the latest:
 - (a) annual report and (if more recent) half-yearly report; and
 - (b) quarterly report,
before the conclusion of any *sale* to such a *person*.
- (5) The *authorised fund manager* must provide a copy of each annual, half-yearly and quarterly report to the *FCA*.
- (6) For a *scheme* which is an *umbrella*, any annual report provided under (3) or (4) may be a report prepared under ■ COLL 15.5.3R(3), but the

authorised fund manager must nevertheless provide free of charge the report prepared under ■ COLL 15.5.3R(2) if a *unitholder* or any other *person* eligible to invest in the *scheme* requests it.

Contents of the annual report

15.5.3

R

- (1) An annual report, other than for a *scheme* which is an *umbrella*, must contain:
 - (a) the accounts for the *annual accounting period* prepared in accordance with the requirements of the *SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 15.5.6R (Authorised fund manager's report);
 - (c) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A) (Comparative information);
 - (d) the report of the *depository* in accordance with ■ COLL 15.5.7R (Report of the depository);
 - (e) the report of the auditor in accordance with ■ COLL 4.5.12R (Report of the auditor);
 - (f) subject to ■ COLL 15.5.3R(1)(g), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R;
 - (g) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and
 - (h) where applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments.
- (2) An annual report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
 - (a) for each *sub-fund*:
 - (i) the accounts required by (1)(a);
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 15.5.6R;
 - (iii) comparative information in accordance with ■ COLL 4.5.10R(1A) and ■ (2A);
 - (iv) subject to ■ COLL 15.5.3R(2)(v), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on *firm's* website, in accordance with ■ ESG 2.3.1R;
 - (v) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R; and
 - (vi) where applicable, the amounts paid as donations for Sharia compliance purposes and the *registered charities* which received these payments;

- (b) the report of the *depository* in accordance with ■ COLL 15.5.7R; and
 - (c) the report of the auditor in accordance with ■ COLL 4.5.12R.
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual report for any one or more individual *sub-funds* of the *umbrella*, in which case it must contain:
- (a) for the *sub-fund*:
 - (i) the accounts required by (1)(a);
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 15.5.6R; and
 - (iii) comparative information in accordance with ■ COLL 4.5.10R(1A) and ■ (2A);
 - (b) the report of the *depository* in accordance with ■ COLL 15.5.7R; and
the report of the auditor in accordance with ■ COLL 4.5.12R.
- (4) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* or *sub-fund* for the relevant *annual accounting period*, and of the financial position of the *authorised fund* or *sub-fund* as at the end of that period.
- (5) An annual report of a *long-term asset fund* must also contain a statement setting out a description of the assessment of value required by ■ COLL 15.7.17R including:
- (a) a separate discussion and conclusion for the matters covered in each paragraph of ■ COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;
 - (b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;
 - (c) an explanation for any case in which *unitholders* hold *units* in a *class* for which the payments out of *scheme property* in relation to that *class* as set out in the *prospectus* (in this rule, “charges”) are higher than those applying to other *classes* of the same *scheme* with substantially similar rights;
 - (d) the conclusion of the *authorised fund manager’s* assessment of whether the charges are justified in the context of the overall value delivered to the *unitholders* in the *scheme*; and
 - (e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the *unitholders*, a clear explanation of what action has been or will be taken to address the situation.

- (6) An annual report of a *long-term asset fund* must also contain a statement setting out a description of the assessment required by ■ COLL 15.7.20R (Assessment of investment valuations, due diligence, conflicts of interest and liquidity management), including:
- (a) a separate discussion and conclusion for each of the matters specified in ■ COLL 15.7.21R (Table: minimum considerations – assessment of investment valuations, due diligence, conflicts of interest and liquidity management) and for each other matter that formed part of the assessment;
 - (b) a summary of the assessment's findings and the steps undertaken as part of or as a consequence of the assessment; and
 - (c) the conclusion of the *authorised fund manager's* assessment of how it managed the *LTAF* in the best interests of the *scheme*, its investors and the integrity of the market.

Information to be included in annual reports on securities financing transactions and total return swaps

15.5.4

G

- (1) The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a *full-scope UK AIFM* of a *long-term asset fund* must include in the *scheme's* annual report.
- (2) ■ COLL 4.5.8ABUK and ■ COLL 4.5.8ACUK copy out the relevant provisions of that regulation.
- (3) An *authorised fund manager* of a *long-term asset fund* that has not used *securities financing transactions* or *total return swaps* during the relevant *annual accounting period* is not required to include the information in ■ COLL 4.5.8ACUK in its reports.

Contents of the half-yearly report

15.5.5

R

- (1) A half-yearly report on an *authorised fund* or *sub-fund* must contain:
 - (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 15.5.6R;
 - (c) subject to ■ COLL 15.5.5R(1)(d) its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R, where the half-yearly report most closely follows the reporting deadline of 30 June, under ■ ESG 2.1.1R(1); and
 - (d) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R, where the half-yearly report is the report that most closely follows the date on which Part B of the *public product-level sustainability report* was published.

- (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* may choose whether the half-yearly report is prepared for the *umbrella* as a whole, or for each individual *sub-fund*, or both.

Authorised fund manager's report

15.5.6

R

The report of the *authorised fund manager* must include:

- (1) a review of the investment activities during the period to which the report relates;
- (2) a portfolio statement prepared in accordance with the requirements of the *SORP*;
- (3) in the case of an *umbrella* which has more than one *sub-fund*, particulars in the form of a table showing, as at the end of the period to which the report relates:
 - (a) for each *sub-fund*, the number of *units* in that *sub-fund* that were held by a second *sub-fund* of that *umbrella*; and
 - (b) the value of each such holding;

or, alternatively, a statement that there were no such holdings as at the end of that period;
- (4) particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report;
- (5) in relation to each *scheme* or *sub-fund* which is a *long-term asset fund*:
 - (a) the amount of any *remuneration*, charge, payment or expense paid out of the *scheme property* during the period to which the report relates;
 - (b) the *person* to whom that amount was paid;
 - (c) what that *remuneration*, charge, payment or expense was for; and
 - (d) how the *remuneration*, charge, payment or expense was calculated; and
- (6) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

Report of the depositary

15.5.7

R

- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The *depositary's* report must contain:
 - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 15.7.6R and ■ COLL 15.7.7R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*;

- (b) in relation to its oversight and monitoring obligations:
 - (i) a description of the reasonable steps the *depository* has taken to ensure that the *LTAF* has been managed in accordance with each of the matters specified in ■ COLL 15.7.6R(2)(e) (Duties of the depository); and
 - (ii) where an *external valuer* has not been appointed, a statement setting out the *depository's* determination of the matters in ■ COLL 15.2.6R(2)(a) (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets); and
- (c) a statement as to whether in any material respect:
 - (i) the *issue, sale, redemption and cancellation* and calculation of the *price of the units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the fund*; and
 - (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

Signing of the annual and half-yearly reports

15.5.8

R

The annual reports in ■ COLL 15.5.3R(1) and ■ (2) and the half-yearly reports in ■ COLL 15.5.5R(1) must:

- (1) in the case of an *ICVC*, if there is:
 - (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
 - (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT* or *ACS*, if the *authorised fund manager* has:
 - (a) more than one *director*, be signed by at least two *directors* of the *authorised fund manager*; or
 - (b) only one *director*, be signed by the *director* of the *authorised fund manager*.

Quarterly reports

15.5.9

R

- (1) A quarterly report must contain details of any transactions executed by, or for or on behalf of, the *long-term asset fund* in the relevant *quarterly reporting period* which have resulted in assets being held in the *LTAF's* *scheme property*, including:
 - (a) the date of each transaction;
 - (b) details of the asset and type of asset which was the subject of the transaction; and
 - (c) an explanation of how the transaction is consistent with the *LTAF's* investment objectives, investment policy and investment strategy.

- (2) A quarterly reporting period for a long-term asset fund must be determined in accordance with (a) to (c).
- (a) Each quarterly reporting period must be three months long.
 - (b) There must be four consecutive quarterly reporting periods in each annual accounting period.
 - (c) The first quarterly reporting period in each annual accounting period must begin when the annual accounting period begins.

Application of the rules on alterations to the scheme and notice to unitholders

- 15.5.-10 **R**
- (1) ■ COLL 15.5.-10BR to ■ COLL 15.5.-10EG apply in relation to an alteration or change where the *scheme* has an *LTAf retail class* and:
- (a) the proposed alteration or change affects only *unitholders* in an *LTAf retail class*; or
 - (b) the proposed alteration or change affects *unitholders* in an *LTAf retail class* and *unitholders* in a *limited protection LTAf class*.
- (2) ■ COLL 15.5.10R to ■ COLL 15.5.11G may be applied in relation to an alteration or change where:
- (a) (i) the *scheme* has an *LTAf retail class*; and
 - (ii) the proposed alteration or change relates only to a *limited protection LTAf class*; or
 - (b) the *scheme* has no *LTAf retail class*.

- 15.5.-10A **G**
- Where ■ COLL 15.5.-10BR to ■ COLL 15.5.-10EG are not applied to a *scheme* or *class* which is intended only for *limited protection LTAf investors*, the *authorised fund manager* is required to take reasonable care to ensure that ownership of *units* in that *scheme* or *class* is recorded in the *register* only for a *person* who is a *limited protection LTAf investor* (see ■ COLL 15.1.3R(4) (Long-term asset funds: eligible investors)).

Alterations to the scheme and notices to unitholders: rules for schemes or classes made available to retail clients who are not limited protection LTAf investors

- 15.5.-10B **R**
- (1) (a) The *authorised fund manager* must, by way of an *extraordinary resolution*, obtain prior approval from the *unitholders* for any proposed change to the *scheme* which, in accordance with (1)(b), is a fundamental change.
- (b) A fundamental change is a change or event which:
- (i) changes the purposes or nature of the *scheme*;
 - (ii) may materially prejudice a *unitholder*;
 - (iii) alters the risk profile of the *scheme*; or
 - (iv) introduces any new type of payment out of the *scheme property*.

- (2) (a) The *authorised fund manager* must give prior written notice to *unitholders* in respect of any proposed change to the operation of a *scheme* that, in accordance with (2)(b), constitutes a significant change.
- (b) A significant change is a change or event which is not fundamental in accordance with (1) but which:
- (i) affects a *unitholder's* ability to exercise their rights in relation to their investment;
 - (ii) would reasonably be expected to cause the *unitholder* to reconsider their participation in the *scheme*;
 - (iii) results in any increased payments out of the *scheme property* to an *authorised fund manager* or any other *director* of an *ICVC* or an *associate* of either; or
 - (iv) materially increases other types of payment out of *scheme property*.
- (3) (a) The *authorised fund manager* must inform *unitholders* in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the *scheme*.
- (b) A notifiable change is a change or event, other than a fundamental change under (1) or a significant change under (2), which a *unitholder* must be made aware of unless the *authorised fund manager* concludes that the change is insignificant.
- (4) Alterations affecting only a particular *sub-fund* or *class* of *units* may be approved in accordance with (1), (2) or (3) for the particular *sub-fund* or *class* of *units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.

Alterations to the scheme and notices to unitholders: guidance for schemes or classes made available to retail clients who are not limited protection LTAF investors

15.5.-10C G

- (1) Subject to (2), the *guidance* in ■ COLL 4.3.5G (Guidance on fundamental changes) applies to ■ COLL 15.5.-10BR(1) as if:
- (a) in ■ COLL 4.3.5G(2), the references to ■ COLL 4.3.4R(2)(a) to ■ COLL 4.3.4R(2)(c) were references to ■ COLL 15.5.-10BR(1)(b)(i) to ■ (iii); and
 - (b) in ■ COLL 4.3.5G(2)(a), the reference to ■ COLL 7.6.2R was a reference to that *rule* as applied by ■ COLL 15.10.4R (Schemes of arrangement).
- (2) ■ COLL 4.3.5G(2)(f) (the introduction of *limited redemption arrangements*) does not apply to ■ COLL 15.5.-10BR(1).
- (3) The *guidance* in ■ COLL 4.3.7G (Guidance on significant changes) applies to ■ COLL 15.5.-10BR(2) as if the references to ■ COLL 4.3.6R were references to ■ COLL 15.5.-10BR(2).
- (4) The *guidance* in ■ COLL 4.3.9G (Guidance on notifiable changes) applies to ■ COLL 15.5.-10BR(3) as if the reference to ■ COLL 4.3.8R was a reference to ■ COLL 15.5.-10BR(3).

Change events relating to feeder LTAFs: schemes made available to retail clients who are not limited protection LTAF investors

15.5.-10D **R**

- (1) Where the *authorised fund manager* of a *feeder LTAF* is notified of any change in respect of its *qualifying master LTAF* which has the effect of a change to the *feeder LTAF*, the *authorised fund manager* must:
 - (a) classify it as a fundamental change, significant change or a notifiable change to the *feeder LTAF* in accordance with ■ COLL 15.5.-10BR; and
 - (b)
 - (i) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*;
 - (ii) for a significant change, give written notice to *unitholders* of that change; or
 - (iii) for a notifiable change, comply with ■ COLL 15.5.-10BR(3).
- (2) The actions required by (1)(b)(i) and (1)(b)(ii) must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder LTAF* has been informed of the relevant change to the *qualifying master LTAF*.

15.5.-10E **G**

- (1) The *authorised fund manager* of the *feeder LTAF* should assess the change to the *qualifying master LTAF* in terms of its impact on the *feeder LTAF*. For example, a change to the investment objective and policy of the *qualifying master LTAF* that alters its risk profile would constitute a fundamental change for the *feeder LTAF*.
- (2) In order for the *feeder LTAF* to continue investing in the *qualifying master LTAF*, the *authorised fund manager* of the *feeder LTAF* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *qualifying master LTAF*. This should be done in accordance with ■ COLL 15.9 (Operational requirements for feeder LTAFs).
- (3) Not all changes affecting the *qualifying master LTAF* will have the same significance for the *feeder LTAF* and its *unitholders*. For example, a change to how the prices of the *units* in the *qualifying master LTAF* are published might not be a significant change for the *feeder LTAF* if the prices of its own *units* continue to be published in the same way.
- (4) Where the *authorised fund manager* of the *feeder LTAF* receives insufficient notice of the intended change to the *qualifying master LTAF* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder LTAF*.

Alterations to the scheme and notices to unitholders: rules for schemes or classes intended only for limited protection LTAF investors

- 15.5.10 **R**
- (1) Any proposed change which would be reasonably considered to be a fundamental change to the *scheme* requires the prior sanction of an *extraordinary resolution* of the *unitholders*.
 - (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *unitholders* to become effective.
 - (3) Alterations affecting only a particular *sub-fund* or *class* of *units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class* of *units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
 - (4) This *rule* and **COLL 15.5.12R** (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class* of *units* rather than the *scheme* or *sub-fund* as a whole.

Alterations to the scheme and notices to unitholders: guidance for schemes or classes intended only for limited protection LTAF investors

- 15.5.11 **G**
- Although account should be taken of the *guidance* on fundamental changes (**COLL 4.3.5G** (Guidance on fundamental changes)) and significant changes (**COLL 4.3.7G** (Guidance on significant changes)) the impact of any change to the *scheme* should be assessed individually based on the nature of the *scheme* and its investor profile.

Application of rules on meetings of unitholders and service of notices

- 15.5.-12 **R**
- (1) **COLL 15.5.-12BR** applies in relation to a meeting of *unitholders* where the *scheme* has an *LTAF retail class* and either:
 - (a) the meeting is only for *unitholders* with *units* in an *LTAF retail class*; or
 - (b) the meeting is for *unitholders* with *units* in an *LTAF retail class* and a *limited protection LTAF class*.
 - (2) **COLL 15.5.12R** may be applied in relation to a meeting of *unitholders* where:
 - (a) (i) the *scheme* has an *LTAF retail class*; and
 - (ii) the meeting is only for *unitholders* in a *limited protection LTAF class*; or
 - (b) the *scheme* has no *LTAF retail class*.

- 15.5.-12A **G**
- Where **COLL 15.5.-12BR** is not applied to a *scheme* or *class* which is intended only for *limited protection LTAF investors*, the *authorised fund manager* is required to take reasonable care to ensure that ownership of *units* in that *scheme* or *class* is recorded in the *register* only for a *person* who is a *limited*

protection LTAF investor (see ■ COLL 15.1.3R(4) (Long-term asset funds: eligible investors)).

Meetings of unitholders and service of notices: schemes or classes made available to retail clients who are not limited protection LTAF investors

15.5.-12B **R**

- (1) The provisions of ■ COLL 4.4 (Meetings of unitholders and service of notices) apply to an *authorised fund manager*, any other *director* of an *ICVC* and a *depository* of a *long-term asset fund*.
- (2) The *authorised fund manager* must record and keep minutes for 6 years of all proceedings to which ■ COLL 15.5.-10BR (Alterations to the scheme and notices to unitholders: schemes with unitholders who are not limited protection LTAF investors) and this *rule* are relevant.

Meetings of unitholders and service of notices: rules for schemes or classes intended only for limited protection LTAF investors

15.5.12 **R**

- (1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the *instrument constituting the fund* and be reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all proceedings to which ■ COLL 15.5.10R (Alterations to the scheme and notices to unitholders) and this *rule* are relevant.
- (3) The provisions in ■ COLL 4.4.12R (Notices to unitholders), ■ COLL 4.4.13R (Other notices) and ■ COLL 4.4.14G (References to writing and electronic documents) apply in relation to *long-term asset funds*.

15.6 Investment and borrowing powers

Application

15.6.1

R

This section applies to:

- (1) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (3) an *ICVC*,
which is a *long-term asset fund*.

15.6.2

R

- (1) Where this section refers to a second *scheme*, and the second *scheme* is a feeder *scheme*, which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to the feeder *scheme's* master *scheme*.
- (2) Where this section refers to a second *scheme*, and the second *scheme* is a master *scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *long-term asset fund* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

Prudent spread of risk

15.6.3

R

An *authorised fund manager* must ensure that, taking account of the investment objectives, policy and strategy of the *long-term asset fund* as stated in its most recently published *prospectus*, the *scheme property* of the *long-term asset fund* aims to provide a prudent spread of risk.

15.6.4

G

For the purpose of ■ COLL 15.6.3R, an *authorised fund manager* should consider the risks to which the *LTAF* is exposed, including:

- (1) whether the assets or *investments* held in the *scheme property* provide a sufficient diversification of exposure including, for example, in respect of the underlying assets or *investments* held by any holding company or other *collective investment scheme*;

- (2) the spread of any other risks arising from the assets or *investments* held in the *scheme property* of the *LTAF* such as *market risks*, *credit risks*, *liquidity risks* and *counterparty risks*.

[**Note:** Article 44 of the *AIFMD level 2 regulation*.]

Investment powers: general

- 15.6.5 **R**
- (1) The *scheme property* of a *long-term asset fund* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the fund* and the *prospectus* may further restrict:
- (a) the kinds of assets in which the *scheme property* may be invested;
 - (b) the types of transactions permitted and any relevant limits; and
 - (c) the borrowing powers of the *scheme*.

Long-term asset funds: investment strategy

- 15.6.6 **R** The investment strategy of a *long-term asset fund* must be to invest mainly in long-term illiquid assets.

- 15.6.7 **G** The *FCA* expects the investment strategy of a *long-term asset fund* to be to invest at least 50% of the value of the *scheme property* in unlisted *securities* and other long-term assets such as interests in immovables or other *collective investment schemes* investing in such *securities* or long-term assets. However, a *long-term asset fund* could have a strategy of investing mainly in a mix of unlisted assets and listed but illiquid assets.

Long-term asset funds: general

- 15.6.8 **R** The *scheme property* of a *long-term asset fund* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:
- (1) any *specified investment*:
 - (a) within articles 74 to 86 of the *Regulated Activities Order*;
 - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a specified investment within (a);
 - (2) (to the extent not within (a)) an interest in a loan, provided that the loan was not originated to:
 - (a) a natural person;
 - (b) the *authorised fund manager* of the *long-term asset fund*;
 - (c) the *depository* of the *long-term asset fund*;
 - (d) an *affiliated company* of the person in (b) or (c); or
 - (e) a person who intends to use, or uses, the credit for the purpose of investing in a *derivative*, *cryptoasset derivative*, an *unregulated*

transferable cryptoasset, precious metals or a commodity contract within (5);

- (3) an interest in an immovable under ■ COLL 15.6.18R (Investment in property);
- (4) *precious metals*; or
- (5) a *commodity contract* traded on an *RIE* or a *recognised overseas investment exchange*.

[**Note:** *Full-scope UK AIFMs* are subject to specific requirements relating to conflicts of interest (see articles 30 to 36 in the *AIFMD level 2 regulation* and ■ SYSC 10.1.23R to ■ SYSC 10.1.26R (Additional requirements for an AIFM)).]

[**Note 2:** In relation to (2), a borrower who receives *money* by way of *deposit* from a *person* who is not a *bank* may (if the borrower is acting by way of business) be carrying on the *regulated activity* of *accepting deposits*, but an exclusion in the *Regulated Activities Order* may be available. See also article 2 of the *Business Order*.]

Investment in collective investment schemes

15.6.9

R

- (1) Subject to (2) and (3) (where applicable), a *long-term asset fund* may invest in *units* in a *scheme* (a '*second scheme*') only if the *second scheme* is:
 - (a) a *regulated collective investment scheme*; or
 - (b) a *scheme* not within (a) where the *authorised fund manager* has taken reasonable care to determine that:
 - (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;
 - (ii) the calculation of the net asset value of each of the *second schemes* and the maintenance of their accounting records is segregated from the investment management function; and
 - (iii) it (and any *master scheme* to whose *units* it is *dedicated*) is prohibited from investing in the *long-term asset fund*, or, if there is no such prohibition, the *authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made by either the *second scheme* or any *fund* in which the *second scheme* invests.
- (2) A *long-term asset fund* must not invest more than 20% in value of the *scheme property* in *units* in *second schemes* which are *unregulated schemes, qualified investor schemes or long-term asset funds* unless the *authorised fund manager* has carried out appropriate due diligence on each of the *second schemes* and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the *second scheme* complies with relevant legal and regulatory requirements.
- (3) The *authorised fund manager* of a *long-term asset fund* with more than 20% in value of the *scheme property* invested in one or more *second schemes* which are *unregulated schemes, qualified investor schemes or long-term asset funds* must carry out appropriate due diligence on those *schemes* on an ongoing basis.

- 15.6.10 **G**
- (1) The *authorised fund manager* of a long-term asset fund carrying out due diligence for the purpose of ■ COLL 15.6.9R should use reasonable efforts to make enquiries and obtain the information needed to be able to consider the matters specified in ■ COLL 5.7.11G(1) to (12), as if that *guidance* related to ■ COLL 15.6.9R.
 - (2) Where ■ COLL 5.7.11G(10) refers to ■ COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to ■ COLL 15.8.2R (Valuation, pricing and dealing).
 - (3) In addition to the *guidance* at ■ COLL 5.7.11G the *authorised fund manager* should, as part of its due diligence process, consider whether the property of each of the second *schemes* is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second *scheme* and, if not, what controls over the property of the second *scheme* are in place to protect investors.
 - (4) Further specific requirements relating to due diligence apply to the *authorised fund manager* of a long-term asset fund under the *rules* in this chapter and in articles 18 to 20 of the *AIFMD level 2 regulation*.

Investment in a collective investment scheme that is an umbrella

- 15.6.11 **R** Where the second *scheme* in ■ COLL 15.6.9R is an *umbrella*, the provisions apply to each *sub-fund* as if it were a separate *scheme*.

Delivery of property under a transaction in derivatives or a commodities contract

- 15.6.12 **R**
- (1) An *authorised fund manager* must take reasonable care to determine the following when entering into any transaction in *derivatives* or any *commodity* contract which may result in any asset becoming part of the *scheme property*:
 - (a) if it is an asset in which the *scheme property* could be invested, that the transaction:
 - (i) can be readily closed out; or
 - (ii) would at the expected time of delivery relate to an asset which could be included in the *scheme property* under the *rules* in this chapter; or
 - (b) in any other case, that the transaction can be readily closed out.
 - (2) An *authorised fund manager* may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the *unitholders*, provided it has the consent of the *depository*.
 - (3) Any asset within (1) acquired in accordance with (2) may form part of the *scheme property* despite any other *rule* in this chapter until the position can be rectified.

Cover for transactions in derivatives and forward transactions

- 15.6.13 **R**
- (1) A transaction in *derivatives* or a forward transaction may be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under (2).
 - (2) Exposure is globally covered if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure taking into account any reasonably foreseeable market movement.
 - (3) The total exposure relating to *derivatives* held in a *long-term asset fund* may not exceed the net value of the *scheme property*.
 - (4) No element of cover may be used more than once.

Valuation of an OTC derivative

- 15.6.14 **R**
- A transaction in an *OTC derivative* must be capable of valuation which it will only be if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:
- (1) on the basis of the pricing model; or
 - (2) on some other reliable basis reflecting an up-to-date market value, which has been agreed between the *authorised fund manager* and the *depository*.

Continuing nature of limits and requirements

- 15.6.15 **R**
- (1) An *authorised fund manager* must, as frequently as necessary to ensure compliance with ■ COLL 15.6.13R(2) and ■ COLL 15.6.13R(4), recalculate the amount of cover required in respect of *derivatives* and forward transactions in existence under this chapter.
 - (2) *Derivatives* and forward transactions may be retained in the *scheme property* only so long as they remain covered globally under ■ COLL 15.6.13R.
 - (3) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* positions and their contribution to the overall risk profile of the *scheme*.

Permitted stock lending

- 15.6.16 **R**
- (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund manager*, may enter into a *repo* contract or a *stock lending arrangement* within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).

- (2) The *depository* must ensure that the value of any *collateral* for the *stock lending arrangement* is at all times at least equal to the value of the securities transferred by the *depository*.
- (3) In the case of the expiry of validity of any *collateral*, the duty in (2) is satisfied if the *depository* or the *authorised fund manager*, as appropriate, takes reasonable care to determine that sufficient *collateral* will be transferred by close of business on the *day* of expiry.

General power to borrow

15.6.17

R

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund manager*) may borrow money for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 30% of the net value of the *scheme property* and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.
- (3) In this *rule* "borrowing" also includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.
- (4) Where the limit in (2) is breached, the *authorised fund manager* must take action in accordance with the principles set out in ■ COLL 15.7.3R(3) to ■ COLL 15.7.3R(5) (Duties of the *authorised fund manager*: investment and borrowing powers) to deal with that breach.

Investment in property

15.6.18

R

- (1) Any investment in land or a building held within the *scheme property* of a *long-term asset fund* must be in an immovable within (2).
- (2) For an immovable:
 - (a) it must be situated in a country or territory identified in the *prospectus*;
 - (b) the *authorised fund manager* must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and
 - (c) the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from an *appropriate valuer* that:
 - (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
 - (ii) states that in the *appropriate valuer's* opinion the interest in the immovable would, if acquired by the *scheme*, be capable of being disposed of reasonably quickly at that valuation;
 - (d) unless (c) is satisfied, the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from an *appropriate valuer* valuing the interest in the immovable and stating that:

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- (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property*; and
 - (ii) in the opinion of the *appropriate valuer*, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and
- (2) it must not be bought:
- (e) if it becomes apparent to the *authorised fund manager* that the report in either (c) or (d) could no longer reasonably be relied upon; or
 - (e) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).
- (3) Any contents of any building may be regarded as part of the relevant immovable.
- (4) An *appropriate valuer* must be a person who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of an *authorised fund* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
 - (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *authorised fund manager* and *depository* of the *AUT* or *ACS*; and
 - (d) has not been engaged, and whose *associates* have not been engaged, in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

Investment in overseas property through an intermediate holding vehicle

15.6.19

R

- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.
- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

15.6.20

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- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in

immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:

- (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the *scheme's* investment objectives and policy.
 - (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
 - (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
 - (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

Investment limits for immovables

15.6.21 **R** The following limits apply in respect of immovables held as part of the *scheme property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under ■ COLL 15.6.18R(2)(c) or ■ COLL 15.6.18R(2)(d) or ■ COLL 15.6.22R, as appropriate;
- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*; and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme* value in any 12-month period, calculated at the date of the granting of the option.

Standing independent valuer and valuation

15.6.22 **R**

- (1) In relation to the appointment of a valuer the *authorised fund manager* must:
 - (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
 - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:

- (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
 - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
 - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
 - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a), instead of under (c),
 - it must immediately inform the *standing independent valuer* of that matter;
 - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
 - (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA 2 of the RICS Valuation – Global Standards 2017 UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to any provisions of the *instrument constituting the fund*.
- (3) In relation to immovables:
- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
 - (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

15.6.23

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In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 15.6.22R(2)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Council.

15.7 Powers and responsibilities of the authorised fund manager and the depository

Application

15.7.1

R

This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other director of an *ICVC*;
- (3) the depository of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,
which is a *long-term asset fund*.

Functions of the authorised fund manager

15.7.2

R

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the fund*;
 - (b) the applicable *rules*;
 - (c) the most recently published *prospectus*; and
 - (d) for an *ICVC*, the *OEIC Regulations*.
- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
- (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
 - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:

- (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
- (ii) by the *ACD* to the *ICVC*;
- (iii) by the *ICVC* to the *ACD*;
- (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
- (v) by the *depository* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate exercises the relevant powers provided under, the *OEIC Regulations*;
- (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the rules in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
- (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the classes of such *units*, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

15.7.3

R

- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 15.6 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 15.6 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

15.7.4

R

Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a foreign law contract entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 15.3.6R(3)(5) and ■ COLL 15.3.6R(3)(6)), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

15.7.5 **G** In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the foreign law contract.

Duties of the depository

- 15.7.6** **R**
- (1) The *depository* is responsible for the safekeeping of all the *scheme property*.
 - (2) The *depository* must:
 - (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
 - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
 - (c) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
 - (d) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 15.8.18R (Income);
 - (e) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
 - (i) the investment objectives, policy and strategy set out in the *LTAF's* most recent *prospectus*;
 - (ii) ■ COLL 15.6 (Investment and borrowing powers);
 - (iii) ■ COLL 15.8.2R (Valuation, pricing and dealing);
 - (iv) ■ COLL 15.8.18 (Income); and
 - (v) any provision of the *instrument constituting the fund* or the *prospectus* that relates to the provisions in (ii) to (iv);
 - (f) where applicable, comply with its obligations under ■ COLL 15.2.6R (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets);
 - (g) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
 - (h) be responsible for any other duties as set out in the *instrument constituting the fund*.

(3) If a relevant *ICVC* ceases to have any *directors*, the *depositary* may act in accordance with ■ COLL 6.5.6R (*ICVC* without a director).

(4) This *rule* applies to the *depositary* of a *long-term asset fund* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[**Note:** Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* applies to the *depositary* of a *long-term asset fund* because an *LTAF* must be managed by a *full-scope UK AIFM*.]

15.7.7

R

The *depositary* must also:

- (1) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate; and
- (2) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions.

Delegation

15.7.8

G

- (1) The delegation of *AIFM management functions* by a *full-scope UK AIFM* is subject to the *rules* in ■ FUND 3.10 (Delegation) and articles 75 to 82 of the *AIFMD level 2 regulation*. See also regulation 26 of the *AIFMD UK regulation*.
- (2) The *authorised fund manager* of a *long-term asset fund* is required to possess the knowledge, skills and experience necessary to understand the activities of the *LTAF* and, in particular, the risks involved in those activities and the assets which the *LTAF* holds (or is to hold) in the *scheme property*. The *authorised fund manager* cannot rely on a delegation arrangement to satisfy this requirement (see ■ COLL 15.2.4R (Competence and resources of the authorised fund manager)).

15.7.9

G

- (1) This paragraph applies where the *authorised fund manager* delegates portfolio management of particular assets to a third party under ■ FUND 3.10 (Delegation).
- (2) Where (1) applies, the *authorised fund manager* will need to retain adequate risk management systems to identify, measure and monitor the risks relevant to the *long-term asset fund's* investment strategy in accordance with the requirements in ■ FUND 3.7 (Risk management) and the applicable requirements of the *AIFMD level 2 regulation*.

[**Note:** See ■ FUND 3.7 (Risk management) and articles 38 to 47 of the *AIFMD level 2 regulation*.]

Delegation and responsibility for regulatory obligations

15.7.10

G

- (1) The *authorised fund manager* of an *LTAF* should note (and will need to comply with) article 75 of the *AIFMD level 2 regulation*. This provides that when delegating the task of carrying out one or more functions on its behalf, an *AIFM* must comply with various general

principles, including the principle that the delegation structure does not allow for the circumvention of the *AIFM's* responsibilities or liability, and that the obligations of the *AIFM* towards the *AIF* and its investors are not altered as a result of the delegation.

- (2) *Directors of an ICVC and depositaries* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

15.7.11 R

- (1) The *authorised fund manager* and the *depositary* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- (2) Paragraph (1) is subject to any provision in the *instrument constituting the fund* and the *prospectus* imposing a prohibition in relation to any type of transaction.

[Note: See articles 30 to 36 of the *AIFMD level 2 regulation*.]

Application of the rules on the register of unitholders: AUTs or ACSs

15.7.-12 R

- (1) ■ COLL 15.7.-12BR applies in respect of any *scheme* which is *sold*, promoted or otherwise made available to *retail clients* who are not *limited protection LTAF investors*.
- (2) ■ COLL 15.7.12R may be applied to a *scheme* which is intended only for *limited protection LTAF investors*.

15.7.-12A G

Where ■ COLL 15.7.-12BR is not applied to a *scheme* which is intended only for *limited protection LTAF investors*, the *authorised fund manager* is required to take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor* (see ■ COLL 15.1.3R (Long-term asset funds: eligible investors)).

The register of unitholders: AUTs or ACSs (schemes made available to retail clients who are not limited protection LTAF investors)

15.7.-12B R

- (1) (a) Either:
 - (i) the *manager* or the *trustee* (as nominated in the *trust deed*); or
 - (ii) the *authorised contractual scheme manager* or the *depositary* of the *ACS* (as nominated in the *contractual scheme deed*),
 must establish and maintain a *register of unitholders* as a *document* in accordance with this *rule*.

- (b) The *manager* or *trustee* or the *authorised contractual scheme manager* or *depository*, in accordance with their duties under (1)(a), must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (c) The *register* must contain:
- (i) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered);
 - (ii) the number of *units* of each *class* held by each *unitholder*;
 - (iii) the date on which the *unitholder* was registered for *units* standing in their name; and
 - (iv) the number of *units* of each *class* currently in *issue*.
- (d) No notice of any trust (express, implied or constructive) which may be entered in the *register* is binding on the *manager* or *trustee*, or the *authorised contractual scheme manager* or *depository*.
- (e) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
- (f) The *person* responsible for the *register* in (1)(a) must:
- (i) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
 - (ii) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or *authorised contractual scheme manager*), during office hours;
 - (iii) supply free of charge to any *unitholder*, or their authorised representative, a copy of the entries on the *register* relating to that *unitholder* on request;
 - (iv) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or *authorised contractual scheme manager* becomes entitled to those *units* (until those units are either cancelled or re-sold and paid for); and
 - (v) carry out any conversion of *units* allowed for by (4) below after consultation with the *manager* or *trustee* or the *authorised contractual scheme manager* or *depository*, as appropriate.
- (2) (a) Subject to (2)(c), if no *person* is entered in the *register* as the *unitholder* of a *unit*, the *authorised fund manager* of the *AUT* or *ACS* must be treated as the *unitholder* of each such *unit* which is in *issue*.
- (b) Where *units* are transferred to the *authorised fund manager*, the *units* need not be cancelled and the *authorised fund manager* need not be entered on the *register* as the new *unitholder*.
- (c) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager*, as the agent for the *scheme*, provided the *authorised contractual*

scheme manager is not entered in the *register* as the *new unitholder*.

- (3) (a) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *trust deed* or *prospectus*.
- (b) Provided:
- (i) the requirements in ■ COLL 15.8.7R (Transfer of units in an ACS) are satisfied; and
 - (ii) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *rules*,
- every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (c) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a body corporate, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (d) In the case of an *AUT* or *ACS*, every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
- (i) any necessary documents that may be required by legislation; and
 - (ii) any other evidence reasonably required by the *person* responsible for the *register*.
- (e) In the case of an *AUT* or *ACS*, the details of an instrument of transfer must be kept for a period of 6 years from the date of its registration.
- (f) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.
- (4) Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

[Note: See also ■ COLL 15.8.7R (Transfer of units in an ACS) and the related guidance in ■ COLL 15.8.8G in relation to transfers of *units* in an ACS.]

The register of unitholders: AUTs or ACSs (schemes intended only for limited protection LTAF investors)

15.7.12

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- (1) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (in accordance with their responsibilities as set out in the *instrument*

constituting the fund) must maintain a *register of unitholders* as a document in accordance with this *rule*.

- (2) The *register* must contain:
 - (a) the name and address of each *unitholder* (for joint *unitholders* no more than four need to be registered);
 - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
 - (c) the date on which the *unitholder* was registered in the *register* for those *units*.
- (3) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *authorised fund manager* must immediately notify the *depository* of an *AUT* or *ACS* of any information it receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

Valuation of investments – good market practice

15.7.13

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Subject to any legal requirements which apply to the valuation of *investments* held or to be held in the *scheme property* of a *long-term asset fund*, the *authorised fund manager* of a *long-term asset fund* which carries on the valuation function itself must follow good market practice to value the *investments* held or to be held in the *scheme property*.

[Note: See ■ FUND 3.9 (Valuation) and articles 67 to 71 of the *AIFMD level 2 regulation*.]

Due diligence – good market practice

15.7.14

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Subject to any applicable legal requirements, the *authorised fund manager* of a *long-term asset fund* must use good market practice to:

- (1) establish, implement and apply written policies and procedures on due diligence; and
- (2) implement effective arrangements for ensuring that investment decisions on behalf of the *long-term asset fund* are carried out in compliance with the objectives, investment strategy and, where applicable, the risk limits of the *scheme*.

[Note: See articles 18 to 20 of the *AIFMD level 2 regulation*.]

15.7.15

G

The *authorised fund manager* may use an appropriate code of good market practice for the purposes of conducting due diligence on *investments* held or to be held in the *scheme property*.

Application of assessment of value, assessment of investment valuations, due diligence, conflicts of interest and liquidity management and independent director rules

15.7.16 **R** ■ COLL 15.7.17R to ■ COLL 15.7.24R apply to an *authorised fund manager* of an *AUT, ACS* or *ICVC*.

Assessment of value

15.7.17 **R** (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.

(2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class of units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

15.7.18 **G** The *guidance* in ■ COLL 6.6.22G applies to interpreting the requirements of ■ COLL 6.6.21R as applied by ■ COLL 15.7.17R.

15.7.19 **R** Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

Assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.20 **R** (1) An *authorised fund manager* of a *long-term asset fund* must conduct an assessment at least annually of how it has managed the *LTAF* in the best interests of the *LTAF*, the *LTAF's* investors and the integrity of the market (see ■ COBS 2.1.4R (AIFMs' best interests rules)).

(2) In carrying out the assessment required by (1), the *authorised fund manager* must consider at least the matters set out in ■ COLL 15.7.21R (Table: minimum considerations – valuation of investments, due diligence, conflicts of interest and liquidity management assessment).

Table: minimum considerations – assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.21 **R** This table belongs to ■ COLL 15.7.20R.

1 Valuation of investments

- (1) Where the *authorised fund manager* performs the valuation function itself:
 - (a) how the methodologies maintained by the *authorised fund manager* to value the *LTAF's investments* represent good market practice;

- (b) where a methodology maintained by the *authorised fund manager* was changed or modified in relation to the valuation of a particular *investment*, the rationale for that change;
 - (c) the rationale for any material change to the valuation of an *investment* held in the *scheme property* during the relevant period; and
 - (d) the consistency of valuation of the *LTAf's investments* with those of the other *AIFs* managed by the *authorised fund manager*
- (2) Where an *external valuer* has been appointed, the *authorised fund manager's* assessment during the relevant period of how:
- (a) the *external valuer* satisfied FUND 3.9.7R(3) (Performance of the valuation function);
 - (b) the *authorised fund manager* was satisfied that it could demonstrate the matters specified in FUND 3.9.9R (Appointment of an *external valuer*); and
 - (c) the *authorised fund manager* was satisfied that it could demonstrate the matters specified in FUND 3.10.2R(2)(f) (General delegation requirements).

2 Due diligence

In relation to due diligence carried out on *investments*, how that due diligence was carried out in accordance with good market practice (see COLL 15.7.14R (Due diligence – good market practice)).

3 Conflicts of interest

In relation to conflicts of interest:

- (1) how any conflicts of interest identified by the *authorised fund manager* under SYSC 10.1.23R (Additional requirements for an *AIFM*) and article 30 of the *AIFMD level 2 regulation* have been avoided, managed, monitored and (where applicable) disclosed under SYSC 10.1.24R (Additional requirements for an *AIFM*) and articles 31 to 36 of the *AIFMD level 2 regulation*; and
- (2) how, in relation to each conflict of interest identified, those actions were in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market.

4 Liquidity management

In relation to the management of liquidity of the *long-term asset fund*:

- (1) how the liquidity profile of the *LTAf*, taking into account borrowing (if any), has been consistent with its redemption policy;
- (2) where monitoring of the liquidity risk of the *LTAf*, including the results of any stress tests, has identified any liquidity management issues, how these were addressed in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market;
- (3) where the *authorised fund manager* has sold an *investment* held in the *scheme property* of the *LTAf* at a price adjusted to reflect the *authorised fund manager's* need to meet *redemption* requests, how that price was determined to be in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market; and
- (4) how decisions to apply or refrain from applying any *dilution levy* or adjustment to *sales* and *redemptions* of *units* ensured that all investors in the *LTAf* were treated fairly, including those investors who were dealing in *units* of the *LTAf*, and those investors who (as applicable) were already invested or remained invested in the *LTAf*.

[Note: See FUND 3.6.3R (Liquidity systems and procedures) and articles 46 to 49 of the *AIFMD level 2 regulation*.]

Independent directors

- 15.7.22 **R**
- (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural *persons*.
 - (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
 - (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
 - (4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
 (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.
 (c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five-year term(s) and cumulative maximum duration of ten years run from that date.
 - (5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten-year period referred to in (4).
 - (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.

- 15.7.23 **G** The *guidance* in ■ COLL 6.6.26G applies to interpreting the requirement for independence in ■ COLL 15.7.22R.

Allocation of responsibility for compliance to an approved person

- 15.7.24 **R**
- (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 15.7.17R, ■ COLL 15.7.20R, ■ COLL 15.7.22R and ■ COBS 2.1.4R (*AFMs' best interests rules*) to an *approved person*.

- (2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.

[**Note:** See ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities).]

15.8 Valuation, pricing, dealing and income

Application

15.8.1 **R** This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,
which is a *long-term asset fund*.

Valuation, pricing and dealing

- 15.8.2 **R**
- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
 - (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
 - (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
 - (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the fund* and the *prospectus*, as appropriate.
 - (5) The *scheme* must have a *valuation point* on each *dealing day* and there must be at least one *valuation point* every *month*.
 - (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
 - (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.

- (8) In respect of each *valuation point* under (5), the *authorised fund manager* must publish in an appropriate manner the price of any type of *unit* based on the valuation carried out in accordance with (6).
- (9) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
- (10) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

Profits from dealing as principal

15.8.3

R

- (1) Where an *authorised fund manager*:
 - (a) accepts instructions to *sell* and *redeem units as principal*; and
 - (b) is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,

subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was sold (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.
- (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3), when dealing as *principal* in relation to:
 - (a) a *unit issued* at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager as principal*; and
 - (b) a *unit redeemed* and *cancelled* at that *valuation point*.
- (3) The amount of the loss referred to in (2) is:
 - (a) for *units issued* in accordance with (2)(a), the difference between the *issue price* of a *unit* and the *sale price* of that *unit*, less any *preliminary charge*;
 - (b) for *units cancelled* in accordance with (2)(b), the difference between the *cancellation price* of a *unit* and the *redemption price* of that *unit*, before any *redemption charge* is applied.
- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent *valuation point*.
- (5) This *rule* applies to the *redemption* and *sale* of *units* of different *classes* at the same *valuation point*, if those *classes* are treated as one for the purpose of ■ COLL 15.8.6R (Issue and cancellation of units in multiple classes).

15.8.4

G

- (1) The *authorised fund manager* may commit its own capital to hold *units* for *dealing as principal* and may seek to profit from gains in the value of the *units* it holds, when it *issues* or *redeems units* at one

valuation point then *sells* or *cancels* them at a later *valuation point*. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the *units* fall in value, or from the ability to match simultaneous *sales* and *redemptions* at different *prices* at no risk to its own capital.

- (2) The *AFM* may allocate any amount arising under ■ COLL 15.8.3R(1) (Profits from dealing as principal) in the interests of investors by paying it into *scheme property* for the benefit of all *unitholders*. Alternatively, the *AFM* may redistribute it individually among the transacting investors.
- (3) Where the *AFM* intends to allocate a payment to *scheme property*, it should determine if the amount (when added to any other amounts of the same kind relating to that *class of units*) would, if taken into account in the *scheme's* valuation, affect the accuracy of the *unit prices* to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the *scheme* until the payment is transferred. Such payments into *scheme property* should be made regularly and no less frequently than payments for the *AFM's* management charge are transferred out of *scheme property*.
- (4) The calculation to be performed under ■ COLL 15.8.3R (Profits from dealing as principal) should be carried out in relation to each *valuation point* of the *scheme* on a timely basis. Where it is not practical to do this before *unit prices* are calculated and published, the *AFM* should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to *scheme property*.

Issue and cancellation of units

15.8.5

R

- (1) The *authorised fund manager* must:
 - (a) ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* of that *class*; and
 - (b) not do or omit anything that would, or might, confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.
- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *depository* of the *AUT* or *ACS*, to *issue* or *cancel units* where the *authorised fund manager* would otherwise be obliged to *sell* or *redeem* the *units* in the manner set out in the *prospectus*.

- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

Issue and cancellation of units in multiple classes

15.8.6

R

If a *long-term asset fund* has two or more *classes* of *unit* in *issue*, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Transfer of units in an ACS

15.8.7

R

(1) Where transfer of *units* in an ACS is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the ACS must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.

(2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 15.3.6R(3)(9)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and ■ COLL 15.4.5R(18)(2) (Table: contents of long-term asset fund prospectus), *units* in the ACS may only be transferred to a *person*:

- (a) who is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
- (b) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments).

15.8.8

G

The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unit holder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 15.8.10R (Redemption of ACS units in an LTAF by an authorised contractual scheme manager) in those cases by *redeeming* those *units*.

Responsibilities of the authorised contractual scheme manager in relation to ACS units

- 15.8.9 **R** (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *long-term asset fund* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder* in a *long-term asset fund*, unless:
- (a) that *person* is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) *units* in a *long-term asset fund* may be promoted to that *person* without contravening the *rules* in ■ COBS 4.12A (Promotion of restricted mass market investments).
- (2) The *authorised contractual scheme manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

Redemption of ACS units in an LTAF by an authorised contractual scheme manager

- 15.8.10 **R** The *authorised contractual scheme manager* of a *long-term asset fund* which is an ACS must *redeem units* in the *scheme* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in ■ COLL 15 Annex 1R(1) and ■ (2) (ACS Long-Term Asset Funds: eligible investors).

Dealing: sale of units

- 15.8.11 **R** The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* to any eligible investor (subject to any conditions in the *instrument constituting the fund* and the *prospectus*, which must be fair and reasonable as between all *unitholders* and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such *sale*.

Dealing: redemption of units

- 15.8.12 **R** (1) In this *rule*, a 'redemption determination' is a determination by the *authorised fund manager* of the *long-term asset fund* to:
- (a) accept a request by a *unitholder* to *redeem units* in the *scheme*;
 - (b) refuse a *redemption* request (see paragraph (2)(c)); or
 - (c) make such other determination in relation to the *redemption* request as may be provided for in the *instrument constituting the fund* and the *prospectus* (see paragraph (6) below, and ■ COLL 15.8.13G(6) and ■ (7)).
- (2) The *redemption* arrangements for a *long-term asset fund* must ensure the following:

- (a) A *unitholder* must be able to submit a request to *redeem units* before the next date on which the *authorised fund manager* makes a *redemption determination*, subject to any cut-off point which may be specified in the *prospectus* for this purpose.
 - (b) The *authorised fund manager* must not make *redemption determinations* more frequently than the *dealing* frequency of the *scheme* and, in any event, not more than once a *month*.
 - (c) The *authorised fund manager* must accept a *unitholder's* request to *redeem units* in the *scheme* in accordance with any conditions in the *instrument constituting the fund* and the *prospectus* unless the *authorised fund manager* has reasonable grounds to refuse the *redemption* request.
 - (d) The *authorised fund manager* must inform the *unitholder* of the outcome of the *redemption determination*.
 - (e) If the *authorised fund manager* accepts the *unitholder's* request to *redeem units* in the *scheme*:
 - (i) the *redemption* request is deemed to be irrevocable;
 - (ii) the *authorised fund manager* must undertake to effect the *redemption* at the applicable time, in accordance with any conditions in the *instrument constituting the fund* and the *prospectus*; and
 - (l) the *authorised fund manager* must confirm to the *unitholder*:
 - (A) that the *redemption* request has been accepted and cannot be revoked; and
 - (B) having regard to the period specified for the purposes of (f), the dates on which it is expected that the *redemption* will be effected and the appropriate proceeds paid.
 - (f) The *authorised fund manager* must determine the *price* for the *units* being *redeemed* pursuant to the *unitholder's redemption* request at the first *valuation point* following the end of the notice period specified in the *instrument constituting the fund* and the *prospectus* (the 'notice period').
 - (g) The notice period must be at least 90 *days* after the *day* on which the request to *redeem units* in the *scheme* was accepted.
 - (h) The *authorised fund manager* must *redeem* the *units* at the *price* determined in accordance with (f) and pay the *unitholder* the appropriate proceeds of *redemption* in accordance with paragraphs (4) and (5).
- (3) Subject to ■ COBS 2.1.4R (*AIFMs' best interests rule*) and ■ COLL 15.3.2R (*Classes of unit*), where the *long-term asset fund* has more than one *class of unit*, the arrangements for the *redemption* of *units* may differ between *classes* provided the arrangements for all *classes of unit* ensure the matters specified in (2).
- (4) After having effected a *redemption* request, the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *prospectus*, unless it has reasonable grounds for withholding payment.
- (5) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which

must be fair and reasonable as between *redeeming unitholders* and continuing *unitholders*.

- (6) If the *instrument constituting the fund* and the *prospectus* of a *long-term asset fund* permit the *authorised fund manager* to defer or limit a requested *redemption*, those arrangements must not result in:
- (a) the *authorised fund manager* making *redemption determinations* more frequently than once a *month* (see paragraph (2)(b)); or
 - (b) the *notice period* being shorter than 90 *days* (see paragraph (2)(g)).

Sale and redemption of units: guidance

15.8.13

G

- (1) The *authorised fund manager* of a *long-term asset fund* is required to ensure that the investment strategy, liquidity profile and redemption policy for the *scheme* are consistent (see ■ FUND 3.6.2R (Alignment of investment strategy, liquidity profile and redemption policy)).
- (2) Given the type of *investments* that a *long-term asset fund* is likely to hold in its *scheme property*, the FCA considers that a *long-term asset fund* will need to operate particular arrangements for the *redemption of units*.
- (3) The *authorised fund manager* of a *long-term asset fund* must not make *redemption determinations* more frequently than once a *month* (see ■ COLL 15.8.12R(2)(b)), which is the maximum frequency for determining such requests and effecting *redemptions*. The *rules* also require a *long-term asset fund* to have a *notice period* of at least 90 *days* (see ■ COLL 15.8.12R(2)(g)). This is the minimum *notice period* for a *long-term asset fund*.
- (4) However, the frequency of the *days* on which *redemption determinations* are made and the particular *notice period* which is appropriate for a *long-term asset fund* will depend on the reasonable expectations of the target investor group and the particular investment objectives, investment policy and investment strategy of the *scheme*.
- (5) The *authorised fund manager* must also comply with the *AIFMD level 2 regulation*, which contains detailed requirements about liquidity management taking into account the *long-term asset fund's* investment strategy, liquidity profile and *redemption* policy. See, for example, articles 46 to 49 of the *AIFMD level 2 regulation*.
- (6) Other determinations which an *authorised fund manager* may make, if provided for in the *instrument constituting the fund* and the *prospectus* (see ■ COLL 15.8.12R(1)(c)), could include a deferral of execution of a *redemption* request or payment, or a limit on the value or number of *units* which can be *redeemed* at any one *valuation point*.
- (7) *Redemption determinations* should be carried out so that all *unitholders* who have requested *redemption* at any one *valuation point* are treated fairly.

Property Authorised Investment Funds

15.8.14 **R**

The *authorised fund manager* of a *long-term asset fund* that is also a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that *scheme* (the “maximum allowable”).

For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:

- the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
- in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.

Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, the *authorised fund manager* must:

- notify the *body corporate* of that event;
- not pay any income distribution to the *body corporate*; and
- redeem* or *cancel units* forming the *body corporate’s* holding down to the maximum allowable within a reasonable timeframe.

For the purpose of (3)(c), a reasonable timeframe means the timeframe which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

Reasonable steps to monitor the maximum allowable include:

15.8.15 **G**

Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

Payments: application of rules

15.8.15A **R**

- (1) ■ COLL 15.8.15CR to ■ COLL 15.8.15PR apply in relation to an *LTAf retail class*.
- (2) In relation to a *limited protection LTAf class*:
 - (a) ■ COLL 15.8.15CR and ■ COLL 15.8.15DG always apply; and
 - (b) ■ COLL 15.8.15QR may be applied.
- (3) ■ COLL 15.8.15CR to ■ COLL 15.8.15PR apply as specified in the table in (4).
- (4) This table belongs to (3).

Rule	ICVC	Authorised fund manager	Depository of an ICVC, AUT or ACS
COLL 15.8.15CR	x	x	x
COLL 15.8.15DG	x	x	x
COLL 15.8.15EG	x	x	
COLL 15.8.15FR	x	x	
COLL 15.8.15GR		x	
COLL 15.8.15HG		x	
COLL 15.8.15IR		x	
COLL 15.8.15JR		x	x
COLL 15.8.15KG		x	x
COLL 15.8.15LR	x	x	
COLL 15.8.15MG	x	x	
COLL 15.8.15NR	x	x	x
COLL 15.8.15OG		x	x
COLL 15.8.15PR	x	x	

Note: "x" means "applies" but not every paragraph in every rule will necessarily apply.

15.8.15B **G** Where ■ COLL 15.8.15EG to ■ COLL 15.8.15PR are not applied to *classes* which are intended only for *limited protection LTAF investors*, the *authorised fund manager* is required to take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor* (see ■ COLL 15.1.3R (Long-term asset funds: eligible investors)).

Payments out of scheme property

15.8.15C **R**

(1) The only payments which may be recovered from the *scheme property* of a *long-term asset fund* are those in respect of:

- (a) remunerating the parties operating the *authorised fund*;
- (b) the administration of the *authorised fund*;
- (c) the investment or safekeeping of the *scheme property*; and
- (d) subject to (1A), donations to one or more *registered charities* for Sharia compliance purposes (in this *rule*, 'purification'), as set out in and authorised by the *prospectus* of the *scheme*.

(1A) Payments relating to (1)(d) may only be made from the *income property* of the *scheme* where they represent the required percentage of the *income property* recognised for purification as advised by a *person* with appropriate knowledge of finance and Islamic law.

(2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.

- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.
- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of *units* on behalf of *unitholders* rather than on behalf of the *authorised fund*.

Payments out of scheme property: guidance

15.8.15D G

- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with ■ COLL 15.4.5R(14) (Table: contents of a long-term asset fund prospectus).
- (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ■ COLL 15.8.15CR(2) does not invalidate a payment that gives rise to a difference between the rights of separate *classes of unit* that relates solely to the payments that may be taken out of *scheme property*.
- (4) Payments to third parties as referred to in ■ COLL 15.8.15CR(4) include payments to *platform service providers* and other similar platform services.
- (5) The *person* referred to in ■ COLL 15.8.15CR(1A) should be independent of the *authorised fund manager* and any *registered charity* to which payments may be made.

Performance fees

15.8.15E G

- (1) For the *authorised fund manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the value or price of property of any description or index or other factor designated for the purpose (a 'performance fee').
- (2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with ■ COLL 15.8.15CR. In determining whether the performance fee is consistent, the *authorised fund manager* should have regard to factors such as:
 - (a) where it is made on the basis of performance of the *authorised fund* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *authorised fund* and must be consistently applied;
 - (b) the performance fee may be based on performance above a defined positive rate of return (the 'hurdle rate'), which may be fixed or variable;
 - (c) where (a) or (b) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
 - (d) the period over which it accrues and the frequency with which it crystallises should be reasonable; and

(e) except where allowed by ■ COLL 15.8.15CR(1), there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.

(3) In accordance with ■ COLL 15.4.5R(14) (Table: contents of a long-term asset fund prospectus), the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

15.8.15F **R** Any performance fee specified in the *prospectus* must be calculated on the basis of the *scheme's* performance after deduction of all other payments out of *scheme property*.

Charges on buying and selling units

15.8.15G **R** (1) No *person* other than the *authorised fund manager* may impose charges on *unitholders* or *potential unitholders* when they buy or sell units.

(2) An *authorised fund manager* must not make any charge or levy in connection with:

(a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be:

(i) a fixed amount; or

(ii) calculated as a percentage of the *price* of a *unit*; or

(iii) calculated as a percentage of the amount being subscribed; or

(b) the *redemption* or *cancellation* of *units*, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.

Charges on buying and selling units: guidance

15.8.15H **G** (1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with:

(a) ■ COLL 15.4.5R (Table: contents of a long-term asset fund prospectus);

(b) ■ COLL 15.5.10R (Alterations to the scheme and notices to unitholders) (see also the *guidance* in ■ COLL 15.5.11G); and

(c) COLL 15.5.11AR (Change events relating to feeder LTAFs) (see also the *guidance* in COLL 15.5.11BG).

(2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However, any

redemption charge should not be such that it could be reasonably regarded as restricting any right of *redemption*.

- (3) The *prospectus* should contain a statement as to the determination of the order in which *units* that have been acquired at different times by a *unitholder* are to be taken to be *redeemed* or cancelled for the purpose of imposing the *redemption charge*.
- (4) When a *preliminary charge* is calculated as a percentage of the price of a *unit*, the percentage amount should be added to:
 - (a) the price of a *unit* (for a *single-priced authorised fund*); or
 - (b) the *issue price* (for a *dual-priced authorised fund*).

Charges for the exchange of units in an umbrella

- 15.8.15I R For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

Allocation of payments to income or capital

- 15.8.15J R
- (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
 - (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
 - (b) agree the treatment of any payment with the *depository*.
 - (2) Where, for any *class* of *units* for any *annual accounting period* (see ■ COLL 15.8.18R(2) (Income)), the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

Allocation of payments to income or capital: guidance

- 15.8.15K G
- (1) Any payment as a result of effecting transactions for the *authorised fund* should be made from the *capital property* of the *scheme*.
 - (2) Other than the payments in (1), all other payments should be made from *income property* in the first instance but may be transferred to the *capital account* in accordance with ■ COLL 15.8.15JR(1) (Allocation of payments to income or capital).
 - (3) For payments transferred to the *capital property* of the *scheme* in accordance with (2), the *prospectus* should disclose the matters in ■ COLL 15.4.5R(14) (Table: contents of a long-term asset fund prospectus).
 - (4) If the *authorised fund manager* wishes to make a change in relation to the allocation of payments, the procedures in ■ COLL 15.5.10R (Alterations to the scheme and notices to unitholders) will be relevant.

Prohibition on promotional payments

- 15.8.15L **R**
- (1) No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale* of *units* in an *authorised fund*.
 - (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *key information document*, provided the *prospectus* states, in accordance with ■ COLL 15.4.5R(14) (Table: contents of a long-term asset fund prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

Prohibition on promotional payments: guidance

- 15.8.15M **G**
- Examples of payments which are not permitted by ■ COLL 15.8.15LR include:
- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
 - (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under ■ COLL 15.8.15LR(2)).

Payments of liabilities on transfer of assets

- 15.8.15N **R**
- (1) Where the *scheme property* of an *LTAF* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue* of *units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.
 - (2) The *ICVC* or the *depository* of the *ICVC*, *ACS* or *AUT* as the successor in title to the property transferred may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
 - (a) there is nothing in the *instrument constituting the fund* of the *LTAF* expressly forbidding the payment; and
the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

- 15.8.15O **G**
- Except as provided in ■ COLL 15.8.3R (Profits from dealing as principal), an *affected person* is not liable to account to another *affected person* or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:
- (1) *dealings* in the *units* of a *scheme*; or
 - (2) any transaction in *scheme property*; or
 - (3) the supply of services to the *scheme*,

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Allocation of scheme property

- 15.8.15P **R** For a *scheme* that is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only must be allocated by the *authorised fund manager* between the *sub-funds* in a manner that is fair to the *unitholders* of the *umbrella* generally.

Payments: limited protection LTAF classes

- 15.8.15Q **R**
- (1) This *rule* applies in relation to a *limited protection LTAF class* unless the provisions in ■ COLL 15.8.15EG to ■ COLL 15.8.15PR have been applied.
 - (2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

Movable or immovable property: ICVCs

- 15.8.16 **R** An *ICVC* must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) [deleted.]

Exemption from liability to account for profits

- 15.8.17 **G** Except as provided in ■ COLL 15.8.3R (Profits from dealing as principal), an *affected person* is not liable to account to another *affected person* or to the *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:
- (1) *dealings* in the *units* of a *scheme*; or
 - (2) any transaction in *scheme property*; or
 - (3) the supply of services to the *scheme*;
where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Income

- 15.8.18 **R**
- (1) A *long-term asset fund* must have:
 - () an *annual accounting period*;
 - () a *half-yearly accounting period*; and
 - () an *accounting reference date*;
 the details of which must be set out in the *prospectus*.

- (2) ■ COLL 6.8.2R(2) to ■ COLL 6.8.2R(7) (Accounting periods) also apply to the *half-yearly accounting period* and *annual accounting period* of a *long-term asset fund*.
- (3) A *long-term asset fund* must have an *annual income allocation date*, which must be within four *months* of the *accounting reference date*.
- (4) A *long-term asset fund* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (5) ■ COLL 6.8.3R(3) (Income allocation and distribution) to ■ COLL 6.8.3AG (Allocation of income to difference classes of unit) also apply to a *long-term asset fund*.

15.9 Operational requirements for feeder LTAFs

Application

15.9.1

R

This section applies as follows:

- (1) ■ COLL 15.9.2R to ■ COLL 15.9.6R apply to the *authorised fund manager* of a *feeder LTAF*;
- (2) ■ COLL 15.9.6R also applies to:
 - (a) an *ICVC* that is a *feeder LTAF*; and
 - (b) any *person* acting on behalf of either the *feeder LTAF* or the *authorised fund manager* of the *feeder LTAF*; and
- (3) ■ COLL 15.9.7R applies to the *authorised fund manager* of a *long-term asset fund* which operates as a *qualifying master LTAF* to a *feeder LTAF*.

Pre-investment requirements of the authorised fund manager of a feeder LTAF

15.9.2

R

Before investing in the *qualifying master LTAF*, the *authorised fund manager* of the *feeder LTAF* must:

- (1) be satisfied on reasonable grounds that it can obtain from the *qualifying master LTAF* all the information necessary to comply on an ongoing basis with the *rules* in *COLL*;
- (2) having consulted with the *depository* of the *feeder LTAF*, be satisfied on reasonable grounds that the *depository* of the *feeder LTAF* can obtain from the *qualifying master LTAF*, the *operator* of the *qualifying master LTAF* or the *depository* of the *qualifying master LTAF* all the information necessary to comply with its duties under ■ COLL 15.7.6R and ■ COLL 15.7.7R (Duties of the depository); and
- (3) inform the *authorised fund manager* of the *qualifying master LTAF* of the date on which the *feeder LTAF* will begin to invest into the *qualifying master LTAF* as a *feeder LTAF*.

Ownership of units in a feeder LTAF

15.9.3

R

The *authorised fund manager* of a *feeder LTAF* must take reasonable care to ensure that its *units* are not owned, including beneficially owned, by the

qualifying master LTAF or any other *scheme* in which the *qualifying master LTAF* invests.

Charges made by the qualifying master LTAF or its operator to a feeder LTAF on investment or disposal

15.9.4

R

- (1) Where the *operator* or the *authorised fund manager* of a *qualifying master LTAF* imposes any charge which is, or is equivalent in effect to, a *preliminary charge* or *redemption charge* on the *feeder LTAF* for the acquisition or disposal of *units* in the *qualifying master LTAF*, the *authorised fund manager* of the *feeder LTAF* must pay to the *feeder LTAF* an amount equal to such charge within four *business days* following the relevant acquisition or disposal.
- (2) In this *rule*, where the *operator* or *authorised fund manager* of a *qualifying master LTAF* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master LTAF* which is, or is equivalent in effect to, a *dilution levy* made in accordance with the *instrument constituting the fund* and the *prospectus*, it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

Avoidance of opportunities for market timing

15.9.5

R

The *authorised fund manager* of a *feeder LTAF* must take appropriate measures to co-ordinate the timing of the *feeder LTAF's valuation points* and *dealing days* with those of its *qualifying master LTAF*, including the publication of *dealing prices*, in order to avoid market timing of their *units*, and prevent arbitrage opportunities.

Inducements

15.9.6

R

Where, in connection with an *investment* in the *units* of the *qualifying master LTAF*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder LTAF*;
- (2) an *authorised fund manager* of a *feeder LTAF*; or
- (3) any *person* acting on behalf of (1) or (2),

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder LTAF* within four *business days* of receipt of that fee, commission or other monetary benefit.

Obligations to unitholders of a qualifying master LTAF

15.9.7

R

Where the *qualifying master LTAF* is an *authorised fund*, the *authorised fund manager* of the *qualifying master LTAF* must not, if it would unfairly prejudice the interests of *unitholders* of the *qualifying master LTAF* other than the *feeder LTAF*, provide or make available information to the *authorised fund manager* of the *feeder LTAF* without at the same time also providing or making available that information to the *unitholders* of the *qualifying master LTAF* other than the *feeder LTAF*.

15.10 Termination, suspension, and schemes of arrangement

Application

15.10.1 **R**

This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,
which is a *long-term asset fund*.

Termination

15.10.2 **R**

For a *long-term asset fund* the provisions in ■ COLL 7.3 to ■ COLL 7.5 will apply as appropriate as if ■ COLL 7 applied to *long-term asset funds*.

Suspension

15.10.3 **R**

- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, temporarily suspend *dealings* in *units* of the *scheme*, a *sub-fund* or a *class*.
- (2) Any suspension within (1) must only be where the *authorised fund manager* has determined that due to exceptional circumstances the suspension of *dealings* is in the interests of *unitholders* or potential *unitholders*, and the *authorised fund manager* must have regard to the interests of all the *unitholders* in the *scheme* in reaching such an opinion.
- (3) At the commencement of suspension under (1), the *authorised fund manager* must immediately inform the *FCA* of the suspension and the reasons for it.
- (4) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences, which:
 - (a) is clear, fair and not misleading;

draws *unitholders'* particular attention to the exceptional circumstance which resulted in the suspension; and

informs *unitholders* how to obtain the information detailed in (4A).

- (4A) The *authorised fund manager* must ensure that it publishes (on its website or by other general means) sufficient details to keep *unitholders* appropriately informed about the suspension including, if known, its likely duration.
- (5) The *authorised fund manager* and the *depository* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.
- (6) The suspension of dealings in units must cease, as soon as (2) no longer applies.
- (7) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FCA* of the results of this review and any change to the information provided in (3).
- (8) The *authorised fund manager* must inform the *FCA* immediately of the resumption of *dealings*.

Schemes of arrangement

15.10.4

R

In relation to an *ICVC*, *ACS* or an *AUT* which is a *long-term asset fund*, the provisions in ■ COLL 7.6 (Schemes of arrangement) will apply as appropriate to the *authorised fund manager*, any other *directors* of the *ICVC* and the *depository* as if ■ COLL 7.6 applied to a *long-term asset fund* and did not exclude *unitholders* becoming *unitholders* in another *long-term asset fund*.

ACS Long-term asset funds: Eligible investors

This Annex belongs to COLL 15.1.3R and COLL 15.1.4G.

For the purposes of the *rule* on eligible investors in a *long-term asset fund* which is an *ACS* (see COLL 15.1.3R(2)), the *authorised contractual scheme manager* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a *person*:

- (1) who is a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or
 - (c) *person* who already holds *units* in the *scheme*; and
- (2) to whom *units* in a *long-term asset fund* may be promoted without contravening the *rules* in COBS 4.12A (Promotion of restricted mass market investments).

Appendix KII Regulation

1 UK KII Regulation

UK **COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.

(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.

(6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid overburdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.

(7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company (see page 42 of this Official Journal). For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.

(8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are

appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.

(9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1). This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.

(10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.

(11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.

(12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.

(14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be

prepared on the basis that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

(15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.

(16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.

(17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26) in order to ensure the equal treatment of investors and a level playing field in financial sectors.

(18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.

(19) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC (OJ L 25, 29.1.2009, p. 18), has been consulted for technical advice.

(20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

*Article 1***Subject matter**

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

*Article 1A***Definitions**

(a) 'Collective Investment Schemes sourcebook' means the Collective Investment Schemes sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as in force on IP completion day.

(b) 'feeder UCITS' has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(c) 'management company' has the meaning given in section 237(2) of the Financial Services and Markets Act 2000;

(d) 'master UCITS' has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(e) 'UCITS' has the meaning given in section 236A of the Financial Services and Markets Act 2000; and

(f) 'UK UCITS' has the meaning given in section 237(3) of the Financial Services and Markets Act 2000.

*Article 2***General principles**

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UK UCITS it manages.
2. This Regulation shall apply to any investment company which has not designated a management company that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in article 51ZA of the Regulated Activities Order 2001.

*Article 3***Principles regarding the key investor information document**

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.
2. The key investor information shall be fair, clear and not misleading.
3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UK UCITS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 13.

2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.

3. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest.'

4. The identification of the UK UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UK UCITS shall follow the compartment or share class name. Where a code number identifying the UK UCITS, investment compartment or share class exists, it shall form part of the identification of the UK UCITS.

5. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT**SECTION 1****Objectives and investment policy***Article 7***Specific contents of the description**

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the UK UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

- (a) the main categories of eligible financial instruments that are the object of investment;
- (b) the possibility that the investor may redeem units of UK UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;
- (c) whether the UK UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;
- (d) whether the UK UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;
- (e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UK UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

- (a) where the UK UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;
- (b) where the UK UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;
- (c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';
- (d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UK UCITS;
- (e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UK UCITS, a statement that this is the

case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the UK UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UK UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UK UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the UK UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UK UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UK UCITS;

- (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UK UCITS may shift over time;
- (c) a statement that the lowest category does not mean a risk-free investment;
- (d) a brief explanation as to why the UK UCITS is in a specific category;
- (e) details of the nature, timing and extent of any capital guarantee or protection offered by the UK UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

- (a) credit risk, where a significant level of investment is made in debt securities;
- (b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UK UCITS as a whole;
- (c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;
- (d) operational risks and risks related to safekeeping of assets;
- (e) impact of financial techniques as referred to in [■ COLL 5.2.19R] such as derivative contracts on the UK UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UK UCITS' management company as laid down in [6.12 of COLL]. Where a management company manages more than one UK UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.
2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:
 - (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UK UCITS;

(b) a single figure shall be shown for charges taken from the UK UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UK UCITS over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UK UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

(a) with regard to entry and exit charges:

(i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

(ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

(b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UK UCITS, including the costs of marketing and distributing the UK UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UK UCITS, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UK UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UK UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UK UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UK UCITS shall be presented in a bar chart covering the performance of the UK UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UK UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UK UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UK UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

*Article 16***Past performance calculation methodology**

The calculation of past performance figures shall be based on the net asset value of the UK UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

*Article 17***Impact and treatment of material changes**

1. Where a material change occurs to a UK UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UK UCITS' past performance prior to that material change shall continue to be shown.
2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

*Article 18***Use of a benchmark alongside the past performance**

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UK UCITS' past performance.
2. For UK UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UK UCITS did not exist.

*Article 19***Use of 'simulated' data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:
 - (a) a new share class of an existing UK UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UK UCITS;
 - (b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:
 - (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;
 - (ii) the feeder's characteristics do not differ materially from those of the master.
2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UK UCITS changing its legal status shall retain its performance record only where the Financial Conduct Authority reasonably assesses that the change of status would not impact the UK UCITS' performance.

4. In the case of mergers, as defined in regulation 7 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011, only the past performance of the receiving UK UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in the United Kingdom:

(a) the name of the depositary;

(b) where and how to obtain further information about the UK UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax position of the UK UCITS may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UK UCITS.'

2. Where the key investor information document is prepared for a UK UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21

Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors'

understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UK UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.
2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.
3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.
2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.
3. A key investor information document with duly revised presentation of past performance of the UK UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.
2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for

'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UK UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UK UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR UK UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a UK UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UK UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UK UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UK UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UK UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.
3. The management company may select a class to represent one or more other classes of the UK UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.
4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.
5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UK UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UK UCITS that are marketed in the UK.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UK UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in ■ COLL 5.2.13R, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UK UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that UK UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UK UCITS' calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:

(i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or

(ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33

Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.

2. The information referred to in paragraph 1 shall include:

(a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with [■ COLL 4.2.3R and ■ 4.5.15R].

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured UK UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UK UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured UK UCITS shall be understood as UK UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UK UCITS with similar features.

2. For structured UK UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UK UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UK UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The key investor information document for structured UK UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

1. Where the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

- (a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;
- (b) the investor must specifically consent to the provision of that information in that form;
- (c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (d) the information must be up to date;
- (e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.
2. This Regulation shall apply from 1 July 2011.

Done at Brussels, 1 July 2010.

For the Commission

The President

José Manuel BARROSOL

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.
2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.
3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.

4. The category into which the UCITS falls shall be prominently indicated.
5. No colours shall be used for distinguishing between items on the scale.

ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way: One-off charges taken before or after you invest

Entry charge [] %

Exit charge [] %

This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]

Charges taken from the fund over a year

Ongoing charge [] %

Charges taken from the fund under certain specific conditions

Performance fee [] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

- A percentage amount shall be indicated for each of these charges.
- In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;
2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;
3. the X-axis shall be set at the level of 0% performance;
4. a label shall be added to each bar indicating the return in percentage that was achieved;
5. past performance figures shall be rounded to one decimal place.

Appendix 2

Modifications to the KII Regulation for KII-compliant NURS

2 Modifications to the KII Regulation for KII-compliant NURS

Appendix 2 **R** [Note: the numbering of the original articles in the *KII Regulation* has been retained in this Appendix. References to “[deleted]” in this Appendix refer to provisions which are included in the *KII Regulation*, but are not included in the modified version set out below.]

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1

Subject matter

[deleted]

Article 1A

Definitions

[deleted]

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any *authorised fund manager* with regard to each *KII-compliant NURS* it manages.
2. This Regulation shall apply to any *ICVC* which has chosen not to appoint an *authorised corporate director*.

Article 3

Principles regarding the NURS-KII document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing *key investor information* (hereinafter referred to as a *NURS-KII document*). No other information or statements shall be included except where this Regulation states otherwise.
2. The *key investor information* shall be fair, clear and not misleading.
3. The *NURS-KII document* shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the *KII-compliant NURS* and its risks and benefits.

CHAPTER II**FORM AND PRESENTATION OF KEY INVESTOR INFORMATION****SECTION 1****Title of document, order of contents and headings of sections***Article 4***Title and content of document**

1. The content of the *NURS-KII document* shall be presented in the order as set out in paragraphs 2 to 13.
2. The title 'Non-UCITS retail scheme Key investor information' shall appear prominently at the top of the first page of the *NURS-KII document*.
3. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest.'
4. The identification of the *KII-compliant NURS*, including the *class* or *sub-fund* thereof, shall be stated prominently. In the case of a *sub-fund* or *class*, the name of the *KII-compliant NURS* shall follow the *sub-fund* or *class* name. Where a code number identifying the *KII-compliant NURS sub-fund* or *class* exists, it shall form part of the identification of the *KII-compliant NURS*.
5. The name of the *authorised fund manager* shall be stated.
6. In addition, in cases where the *authorised fund manager* forms part of a *group* of companies for legal, administrative or marketing purposes, the name of that *group* may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.
7. The section of the *NURS-KII document* entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.
8. The section of the *NURS-KII document* entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.
9. The section of the *NURS-KII document* entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the *NURS-KII document* entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the *NURS-KII document* entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A *NURS-KII document* shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the *NURS-KII document* is printed or photocopied in black and white.

3. Where the design of the corporate branding of the *authorised fund manager* or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The *NURS-KII document* shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT**SECTION 1****Objectives and investment policy***Article 7***Specific contents of the description**

1. The description contained in the 'Objectives and investment policy' section of the *NURS-KII document* shall cover those essential features of the *KII-compliant NURS* about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the *prospectus*, including:

- (a) the main categories of eligible *financial instruments* or other classes of assets that are the object of investment;
- (b) the possibility that the investor may *redeem units* of the *KII-compliant NURS* on demand, qualifying that statement with an indication as to the frequency of *dealing in units*;
- (c) whether the *KII-compliant NURS* has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;
- (d) whether the *KII-compliant NURS* allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;
- (e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the *KII-compliant NURS* has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

- (a) where the *KII-compliant NURS* invests in *debt securities*, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;
- (b) where the *KII-compliant NURS* is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details of the algorithm and its workings which appear in the *prospectus*;
- (c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the *KII-compliant NURS*;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the *KII-compliant NURS*, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the *KII-compliant NURS* is stated either in the *prospectus* or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by an *authorised fund manager* as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the *NURS-KII document* may contain elements other than those listed in paragraph 2, including the description of the *KII-compliant NURS*' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the *KII-compliant NURS*.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the *NURS-KII document* shall contain a synthetic indicator (except where paragraph 6 applies), supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the *KII-compliant NURS* and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the *KII-compliant NURS* assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Authorised fund managers shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

- (a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the *KII-compliant NURS*;
- (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the *KII-compliant NURS* may shift over time;
- (c) a statement that the lowest category does not mean a risk-free investment;
- (d) a brief explanation as to why the *KII-compliant NURS* is in a specific category;
- (e) details of the nature, timing and extent of any capital guarantee or protection offered by the *KII-compliant NURS*, including the potential effects of *redeeming units* outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

- (a) credit risk, where a significant level of investment is made in *debt securities*;
- (b) liquidity risk, where a significant level of investment is made in immovables, or in *financial instruments* which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the *KII-compliant NURS* as a whole;
- (c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;
- (d) operational risks and risks related to safekeeping of assets;
- (e) impact of financial techniques such as derivative contracts on the *KII-compliant NURS*' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

6. A *KII-compliant NURS* having a significant exposure to immovables as permitted under ■ COLL 5.6.18R (whereby significant exposure is understood as an exposure of at least 20% in value of the *scheme* property):

- (a) shall not include a *synthetic risk and reward indicator* in the 'Risk and reward profile' section of its *NURS-KII document*; and
- (b) must instead include a full narrative disclosure of risks that are materially relevant to the fund within that section of the *NURS-KII document*;

7. Paragraph 6 will also apply to a *NURS-KII document* for a *feeder NURS* whose *qualifying master scheme* has a significant exposure to immovables.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk

adopted by the *authorised fund manager*. Where an *authorised fund manager* manages more than one *KII-compliant NURS*, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the *NURS-KII document* shall contain a presentation of charges in the form of a table as laid down in Annex II.
2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:
 - (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the *KII-compliant NURS*;
 - (b) a single figure shall be shown for charges taken from the *KII-compliant NURS* over a year, to be known as the 'ongoing charges', representing all annual charges and other payments taken from the assets of the *KII-compliant NURS* over the defined period, and based on the figures for the preceding year;
 - (c) the table shall list and explain any charges taken from the *KII-compliant NURS* under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:
 - (a) with regard to entry and exit charges:
 - (i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;
 - (ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;
 - (b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.
2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the *KII-compliant NURS*, including the costs of marketing and distributing the *KII-compliant NURS*, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.
2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the *KII-compliant NURS*, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).
3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the *KII-compliant NURS*' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new *KII-compliant NURS* cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.
2. Paragraph 1 shall not apply in the following cases:
 - (a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;
 - (b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the *authorised fund manager* gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the *KII-compliant NURS prospectus* where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the *KII-compliant NURS* shall be presented in a bar chart covering the performance of the *KII-compliant NURS* for the last 10 years.

The size of the bar chart referred to in the first sub-paragraph shall allow for legibility, but shall under no circumstances exceed half a page in the *NURS-KII document*.

2. *KII-compliant NURS* with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a *KII-compliant NURS* which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to *KII-compliant NURS* which do not have entry or exit charges.

6. A *NURS-KII document* shall not contain any record of past performance for any part of the current calendar year.

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the *KII-compliant NURS*, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a *KII-compliant NURS'* objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the *KII-compliant NURS'* past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the *NURS-KII document* makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the *KII-compliant NURS'* past performance.

2. For *KII-compliant NURS* which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the *KII-compliant NURS* did not exist.

*Article 19***Use of 'simulated' data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new *class* of an existing *KII-compliant NURS* may simulate its performance by taking the performance of another *class*, provided the two *classes* do not differ materially in the extent of their participation in the assets of the *KII-compliant NURS*;

(b) a *feeder NURS* may simulate its performance by taking the performance of its *qualifying master scheme*, provided that one of the following conditions are met:

(i) the *feeder NURS*' strategy and objectives do not allow it to hold assets other than *units* of the *qualifying master scheme* and ancillary liquid assets;

(ii) the *feeder NURS*' characteristics do not differ materially from those of the *qualifying master scheme*.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A *KII-compliant NURS* changing its legal status but remaining established in the *United Kingdom* shall retain its performance record only where the *FCA* reasonably assesses that the change of status would not impact the *KII-compliant NURS*' performance.

4. In the case of mergers whereby:

(a) one or more *schemes* or *sub-funds* thereof, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing *KII-compliant NURS* or a *sub-fund* thereof (the '*receiving KII-compliant NURS*'), in exchange for the issue to their *unitholders* of *units* of the receiving *KII-compliant NURS*; or

(b) one or more *schemes* or *sub-funds* thereof, which continue to exist until the liabilities have been discharged, transfer their net assets to a *KII-compliant NURS* which they form or to another existing *KII-compliant NURS* or a *sub-fund* thereof (the '*receiving KII-compliant NURS*'); or

(c) one or more *sub-funds* of a *KII-compliant NURS*, which continue to exist until the liabilities have been discharged, transfer their net assets to another *sub-fund* of the same *non-UCITS retail scheme* (the '*receiving KII-compliant NURS*');

only the past performance of the receiving *KII-compliant NURS* shall be maintained in the *NURS-KII document*.

SECTION 5**Practical information and cross-references***Article 20***Content of 'practical information' section**

1. The 'Practical information' section of the *NURS-KII document* shall contain the following information relevant to investors in every Member State in which the *KII-compliant NURS* is marketed:

(a) the name of the *depository*;

(b) where and how to obtain further information about the *KII-compliant NURS*, copies of its *prospectus* and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of *units*;

(d) a statement that the tax legislation of the *United Kingdom* may have an impact on the personal tax position of the investor;

(e) [deleted]

2. Where the *NURS-KII document* is prepared for a *KII-compliant NURS sub-fund*, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between *sub-funds*.

3. Where applicable, the 'Practical information' section of the *NURS-KII document* shall state the information required about available *classes* in accordance with Article 26.

Article 21

Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the *prospectus* and annual or half-yearly reports, may be included in the *NURS-KII document*, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the *NURS-KII document* itself.

Cross-references shall be permitted to the website of the *KII-compliant NURS* or the *authorised fund manager*, including a part of any such website containing the *prospectus* and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the *NURS-KII document* but they shall be kept to a minimum.

SECTION 6

Review and revision of the NURS-KII document

Article 22

Review of key investor information

1. An *authorised fund manager* or *ICVC* shall ensure that a review of *key investor information* is carried out at least every twelve *months*.

2. A review shall be carried out prior to any proposed change to the *prospectus* or the *instrument constituting the fund* where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the *NURS-KII document*.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the *NURS-KII document*, its revised version shall be made available promptly.

2. Where a change to the *NURS-KII document* was the expected result of a decision by the *authorised fund manager*, including changes to the *prospectus* or *instrument constituting the fund* of the *ICVC*, the revised version of the *NURS-KII document* shall be made available before the change comes into effect.

3. A *NURS-KII document* with duly revised presentation of past performance of the *KII-compliant NURS* shall be made available no later than 35 *business days* after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the *authorised fund manager* shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the *KII-compliant NURS* in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The KII-compliant NURS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR KII-compliant NURS STRUCTURES

SECTION 1

Sub-funds

Article 25

Sub-funds

1. Where a *KII-compliant NURS* consists of two or more *sub-funds* a separate *NURS-KII document* shall be produced for each *sub-fund*.

2. Each *NURS-KII document* referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the *NURS-KII document* describes a *sub-fund* of a *KII-compliant NURS*, and, if it is the case, that the *prospectus* and periodic reports are prepared for the entire *KII-compliant NURS* named at the beginning of the *NURS-KII document*;

(b) whether or not the assets and liabilities of each *sub-fund* are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in *units* in one *sub-fund* for *units* in another *sub-fund*, and if so, where to obtain information about how to exercise that right.

3. Where the *authorised fund manager* sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling *units*, that charge shall be stated separately in the 'Charges' section of the *NURS-KII document*.

SECTION 2

Classes of units

Article 26

NURS-KII document for classes of units

1. Where a *KII-compliant NURS* consists of more than one *class* of *units*, the *NURS-KII document* shall be prepared for each *class* of *units*.

2. The *key investor information* pertinent to two or more *classes* of the same *KII-compliant NURS* may be combined into a single *NURS-KII document*, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The *authorised fund manager* may select a *class* to represent one or more other *classes* of the *KII-compliant NURS*, provided the choice is fair, clear and not misleading to potential investors in those other *classes*. In such cases the 'Risk and reward profile' section of the *NURS-KII document* shall contain the explanation of material risk applicable to any of the other *classes* being represented. A *NURS-KII document* based on the representative *class* may be provided to investors in the other *classes*.

4. Different *classes* shall not be combined into a composite representative *class* as referred to in paragraph 3.

5. The *authorised fund manager* shall keep a record of which other *classes* are represented by the representative *class* referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the *NURS-KII document* shall be supplemented by an indication of which *class* has been selected as representative, using the term by which it is designated in the *KII-compliant NURS' prospectus*.

That section shall also indicate where investors can obtain information about the other *classes* of the *KII-compliant NURS* that are marketed.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the *KII-compliant NURS* invests a substantial proportion of its assets in other *collective investment schemes* as referred to in ■ COLL 5.6.10R ('second schemes'), the description of the objectives and investment policy of that *KII-compliant NURS* in the *NURS-KII document* shall include a brief explanation of how the other *second schemes* are to be selected on an on-going basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each 'second scheme' (within the meaning of ■ COLL 5.6.10R), to the extent that these are likely to be material to the *KII-compliant NURS* as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that *KII-compliant NURS* will itself incur as an investor in the 'second scheme' (within the meaning of ■ COLL 5.6.10R). Specifically, any entry and exit charges and ongoing charges levied by the *second scheme* shall be reflected in the *KII-compliant NURS'* calculation of its own ongoing charges figure.

SECTION 4

Feeder KII-compliant NURS

Article 31

Objectives and investment policy section

1. The *NURS-KII document* for a *feeder NURS* shall contain, in the description of objectives and investment policy, information about the proportion of the *feeder NURS'* assets which is invested in the *qualifying master scheme*.
2. There shall also be a description of the *qualifying master scheme's* objectives and investment policy, supplemented as appropriate by either of the following:
 - (i) an indication that the *feeder NURS'* investment returns will be very similar to those of the *qualifying master scheme*; or
 - (ii) an explanation of how and why the investment returns of the *feeder NURS* and *qualifying master scheme* may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the *feeder NURS* differs in any material respect from that of the *qualifying master scheme*, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the *NURS-KII document*.
2. Any liquidity risk and the relationship between purchase and *redemption* arrangements for the *qualifying master scheme* and *feeder NURS* shall be explained in the 'Risk and reward profile' section of the *NURS-KII document*.

Article 33

Charges section

The 'Charges' section of the *NURS-KII document* shall cover both the costs of investing in the *feeder NURS* and any costs and expenses that the *qualifying master scheme* may charge to the *feeder NURS*.

In addition, it shall combine the costs of both the *feeder NURS* and the *qualifying master scheme* in the ongoing charges figure for the *feeder NURS*.

Article 34

Practical information section

1. The *NURS-KII document* for a *feeder NURS* shall contain in the 'Practical information' section information specific to the *feeder NURS*.
2. The information referred to in paragraph 1 shall include:
 - (a) a statement that the *qualifying master scheme's prospectus, NURS-KII document*, and periodic reports and accounts are available to investors of the *feeder NURS* upon request, how they may be obtained, and in which language(s);
 - (b) whether the items listed in point (a) are available in paper copies only or in other *durable media*, and whether any fee is payable for items not subject to free delivery;
 - (c) where the *qualifying master scheme* is established in a different Member State to the *feeder NURS*, and this may affect the *feeder NURS'* tax treatment, a statement to this effect.
3. The statement referred to in paragraph 2(a) may refer to the nearest equivalent disclosure document for a *qualifying master scheme* which does not issue a *NURS-KII document*.

Article 35

Past performance

1. The past performance presentation in the *NURS-KII document* of the *feeder NURS* shall be specific to the *feeder NURS*, and shall not reproduce the performance record of the *qualifying master scheme*.
2. Paragraph 1 shall not apply:

(a) where a *feeder NURS* shows the past performance of its *qualifying master scheme* as a benchmark; or

(b) where the *feeder NURS* was launched at a later date than the *qualifying master scheme*, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the *feeder NURS* existed, based on the past performance of the *qualifying master scheme*; or

(c) where the *feeder NURS* has a past performance record from before the date on which it began to operate as a *feeder NURS*, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured KII-compliant NURS

Article 36

Performance scenarios

1. The *NURS-KII document* for structured *KII-compliant NURS* shall not contain the 'Past performance' section.

For the purposes of this Section, structured *KII-compliant NURS* shall be understood as *KII-compliant NURS* which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or *KII-compliant NURS* with similar features.

2. For structured *KII-compliant NURS*, the 'Objectives and investment policy' section of the *NURS-KII document* shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the *KII-compliant NURS*' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the *KII-compliant NURS*.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not

represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The *NURS-KII document* for structured *KII-compliant NURS* shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a NURS-KII document in a durable medium other than paper or by means of a website

1. Where, the *NURS-KII document* is to be provided to investors using a *durable medium* other than paper the following conditions shall be met:

(a) the provision of the *NURS-KII document* using such a *durable medium* is appropriate to the context in which the business between the *authorised fund manager* and the investor is, or is to be, carried on; and

(b) the person to whom the *NURS-KII document* is to be provided, when offered the choice between information on paper or in that other *durable medium*, specifically chooses that other medium.

2. Where the *NURS-KII document* is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the *authorised fund manager* and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of *electronic communications* shall be treated as appropriate to the context in which the business between the *authorised fund manager* and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS*Article 39***Entry into force**

[deleted]

ANNEX I**REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR**

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.
2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.
3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.
4. The category into which the *KII-compliant NURS* falls shall be prominently indicated.
5. No colours shall be used for distinguishing between items on the scale.

ANNEX II**PRESENTATION OF CHARGES**

The charges shall be presented in a table structured in the following way:

One-off charges taken before or after you invest	
Entry charge	[] %
Exit charge	[] %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
Ongoing charge	[] %
Charges taken from the fund under certain specific conditions	
Performance fee	[] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

- A percentage amount shall be indicated for each of these charges.
- In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

ANNEX III**PRESENTATION OF THE PAST PERFORMANCE INFORMATION**

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;
2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;
3. the X-axis shall be set at the level of 0% performance;
4. a label shall be added to each bar indicating the return in percentage that was achieved;
5. past performance figures shall be rounded to one decimal place.

Collective Investment Schemes

COLL TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force
Extra time provisions					
Existing schemes electing to comply with COLL					
1	Each and every <i>rule</i> in COLL	R	Expired		
1A	Each and every <i>rule</i> in COLL	R	The <i>rules</i> in COLL do not apply to any relevant party in relation to an <i>authorised fund</i> where the winding up of the fund has commenced before 12 February 2007, provided that each relevant party shall continue to comply with the provisions of CIS as if they still applied to them.	From 12 February 2007	12 February 2007
2	Each and every <i>rule</i> in COLL	G	Expired		
3	Each and every <i>rule</i> in COLL	R			
4	Each and every <i>rule</i> in COLL	G	Expired		
5	COLL 6.9.9 R (4) to (6) (Restrictions of business for UCITS management companies)	R	Expired		
6	COLL 6.9.9 R (4) to (6) (Restrictions of business for UCITS management companies)	G	Expired		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
7	COLL 6.6.15 (2), (4) and (5) (Committees and delegation)	R	Expired		
8	COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); (Valuation) and 16 (Table: contents of the prospectus)	R	Expired		
9	COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5 R (Valuation) and COLL 4.2.5 R 16 (Table: contents of the prospectus)	G	Expired		
10	FEES 3.2.1 R Definition of relevant party	R	Expired		
11	COLL	R	Expired		
12	COLL 10.2.1 R	R	Expired		
13	COLL 4.2.5 R	R	Expired		
14	Amendments to COLL made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other Amendments) Instrument 2008	R	(1) [expired]		
			(2) [expired]		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
(3) [expired]					
15	Amendments to COLL 5.6.3 R made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009	R	Expired		
16	COLL 4.5 and COLL 8.3.5 R to COLL 8.3.5E R	R	Expired		
17	COLL 4.5.5R (1)(a)(iv) and COLL 4.5.9R (9A)	R	Expired		
[Note: article 118(2) of the UCITS Directive]					
18	Each and every rule in COLL that relates to <i>key investor information</i>	R	Expired		
19	COLL 4.4.12 R COLL 4.4.13 R COLL 7.7.19 R	R	Expired		
20	COLL 4.4.12 R COLL 4.4.13 R	G	Expired		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	COLL 7.7.19 R				
21	COLL 4.2.5R (3)(qa)	R	Expired		
22	COLL 4.6.8R(8)(d)	R	Expired		
23	COLL 5.9.3 R and COLL 5.9.5 R	R	Expired		
24	COLL 8.3.4R (6)	R	Expired		
25	COLL 3 to COLL 8	R	Expired		
26	COLL 3 to COLL 8	D	Expired		
27	COLL 3 to COLL 8	G	Expired		
28	COLL 4.2.5 R(3)(ca)	R	Expired		
29	Amendments to each and every <i>rule</i> in <i>COLL</i> made by the Collective Investment Schemes (Accounting Amendments) (No 2) Instrument 2015	R	[expired]		
30	Amendments to each and every <i>rule</i> in <i>COLL</i> made by the Collective Investment Schemes (Accounting Amendments) (No 2) Instrument 2015	R	(1) [expired] (2) [expired] (3) The <i>authorised fund manager</i> must make a record of that election and retain it for a period of six years from the date it takes effect.	1 March 2015 until 6 years from the date the relevant election takes place	1 March 2015
31	COLL 4.2.5R(8)(f), (g) and (h), and COLL 4.2.5R(28)	R	[expired]		
32	COLL 4.2.5R(8)(f) and (g)(i) and (ii)	R	(1) The <i>authorised fund manager</i> of a <i>non-UCITS retail scheme</i> need not, for any <i>prospectus</i> issued before 18 March 2016, comply with COLL 4.2.5R(8)(f), (g)(i) and (ii).	From 18 March 2016 until 31	18 March 2016

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force
33	COLL 4.5.7R(7)	R	(2) The <i>prospectus</i> must, however, contain a description of the <i>depository's</i> principal business activity. [expired]	March 2017	
34	COLL 4.7.2R(4)(a) and (6A)	R	(1) Paragraph (2) applies to any <i>key investor information document</i> drawn up by an <i>authorised fund manager</i> before 18 March 2016. (2) The <i>authorised fund manager</i> need not amend the <i>key investor information document</i> until it is revised as a result of a subsequent revision of the <i>key investor information</i> falling after 18 March 2016, and only if the information required by COLL 4.7.2R(4)(a) and (6A) is available to the authorised fund manager at the time of that revision.	From 18 March 2016 until 18 March 2017	18 March 2016
35	The changes set out in Annex F of the UCITS V Directive Instrument 2016 to COLL 6.6.4R(6) and (7), COLL 6 Annex 1R and COLL 12.3.4R(1)	R	The changes to the COLL provisions in column (2) do not apply to an <i>EEA UCITS management company</i> in respect of a <i>UCITS scheme</i> managed by it and the provisions continue to apply as they were in force at 17 March 2016.	18 March 2016 until the earlier of: (1) the date of application of the <i>UCITS level 2 regulation</i> ; and (2) the date the <i>EEA UCITS management company</i> enters into a <i>depository agreement</i> in respect of the <i>scheme</i> that is compliant with the terms of the <i>UCITS level 2 regulation</i>	18 March 2016

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
36	COLL 6.6A.8R	R	A <i>management company</i> may continue to retain a <i>depository</i> that does not meet the requirements in COLL 6.6A.8R if the <i>depository</i> was appointed before 18 March 2016.	From 18 March 2016 until 18 March 2018	18 March 2016
37	COLL 6.6B.8R and COLL 6.6B.11R		A <i>depository</i> that does not meet the requirements in COLL 6.6B.8R and COLL 6.6B.11R may continue to act as <i>depository</i> of a <i>UCITS scheme</i> if it was appointed before 18 March 2016.	From 18 March 2016 until 18 March 2018	18 March 2016
38	COLL 4.2.5AG	G	An <i>authorised fund manager</i> of a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i> does not need to comply with the provisions of the <i>Securities Financing Transactions Regulation</i> referred to in COLL 4.2.5AG for: (1) a <i>sub-fund</i> that was constituted before 12 January 2016 if the <i>scheme</i> is an <i>umbrella</i> ; and (2) a <i>scheme</i> that was constituted before 12 January 2016, if the <i>scheme</i> is not an <i>umbrella</i> . [Note: article 33(2)(c) of the <i>Securities Financing Transactions Regulation</i>]	From 23 September 2016 until 12 July 2017	23 September 2016
39	COLL 8.3.4AG	G	An <i>authorised fund manager</i> of a <i>qualified investor scheme</i> does not need to comply with the provisions of the <i>Securities Financing Transactions Regulation</i> referred to in COLL 8.3.4AG for: (1) a <i>sub-fund</i> that was constituted before 12 January 2016 if the <i>scheme</i> is an <i>umbrella</i> ; and (2) a <i>scheme</i> that was constituted before 12 January 2016, if the <i>scheme</i> is not an <i>umbrella</i> . [Note: article 33(2)(c) of the <i>Securities Financing Transactions Regulation</i>]	From 23 September 2016 until 12 July 2017	23 September 2016
40	COLL 3.2.6R(8) and COLL 5.2.12R(3)(d)	R	An <i>authorised fund manager</i> is not required to update existing statements in the <i>instrument constituting the fund</i> concerning use of the derogation at COLL 5.2.12R(3) due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes: (a) COLL 3.2.6R(8) and (b) COLL 5.2.12R (3)(d).	From 1 October 2016 to 30 September 2019	From 1 October 2016

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Hand-book provision: coming into force
41	COLL 3.2.6R(15)	R	An <i>authorised fund manager</i> is not required to update the <i>instrument constituting the fund</i> due to the amendment to COLL 3.2.6R(15) until it is updated for other purposes.	From 1 October 2016 to 30 September 2019	From 1 October 2016
42	COLL 4.2.5R(3)(i) and COLL 5.2.12R(3)(d).	R	An <i>authorised fund manager</i> is not required to update existing statements in the <i>prospectus</i> concerning use of the derogation under COLL 5.2.12R(3) due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes: (a) COLL 4.2.5R(3)(i) (subject to COLL TP1.1 (43)) and (b) COLL 5.2.12R(3)(d).	From 1 October 2016 to 30 September 2017	From 1 October 2016
43	COLL 4.2.5R(3)(i), COLL 5.6.7R(1), COLL 5.6.8R, and COLL 5.7.5R	R	An <i>authorised fund manager</i> of a <i>non-UCITS retail scheme</i> is not required to comply with the amendments to the <i>rules</i> in column (2) in relation to <i>government and public securities</i> made by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016.	From 1 October 2016 to 30 September 2017	From 1 October 2016
44	COLL 4.2.2R, COLL 4.2.5R, and COLL 4.2.6G.	R	An <i>authorised fund manager</i> is not required to update the <i>prospectus</i> due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes: (a) COLL 4.2.2R(2)(aa) (b) COLL 4.2.5R(2)(aa); (c) COLL 4.2.5R(2B)(b); (d) COLL 4.2.5R(5)(b); (e) COLL 4.2.5R(16)(b)(v); (f) COLL 4.2.5R(18)(b)(i); (g) COLL 4.2.5R(19); (h) COLL 4.2.5R(20); and (i) COLL 4.2.6G(7)(a).	From 1 October 2016 to 30 September 2017	From 1 October 2016
45	COLL 8.3.2R and COLL 8.3.4R	R	An <i>authorised fund manager</i> is not required to update the <i>prospectus</i> due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes: (a) COLL 8.3.2R(1A); (b) COLL 8.3.4R(2)(1A);	From 1 October 2016 to 30 September 2017	From 1 October 2016

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
46	The <i>rules and guidance</i> in COLL that relate to a <i>NURS-KII document</i> .	R	(c) COLL 8.3.4R(14)(3); and (d) COLL 8.3.4R(17)(6). An <i>authorised fund manager</i> of a <i>non-UCITS retail scheme</i> and an <i>ICVC</i> that is a <i>non-UCITS retail scheme</i> may comply with the provisions in column (2) using a <i>key investor information document</i> (as modified by a general direction from the <i>FCA</i>) created before 1 January 2018 if it: (1) had dispensation from the <i>FCA</i> through a modification by consent to market <i>units</i> of the <i>non-UCITS retail scheme</i> using that <i>document</i> until 1 January 2018; and (2) decides to draw up a <i>NURS-KII document</i> , instead of a <i>key information document</i> , in accordance with COLL 4.7 after 1 January 2018.	From 1 January 2018 until 19 February 2018	1 January 2018
47	COLL 4.3.4R(2); COLL 4.3.6R(2); COLL 8.3.6R(1) and (2)	R	A new type of payment out of <i>scheme property</i> , which is introduced by a <i>firm</i> to facilitate the operation of a <i>research</i> payment account under COBS 2.3B.3R(2), does not constitute a fundamental change under COLL 4.3.4R(2) or COLL 8.3.6R(1) requiring prior approval by meeting. Such a change will however constitute a significant change under COLL 4.3.6R(2) and COLL 8.3.6R(2) requiring pre-event notification.	From 3 January 2018 until 3 January 2020	3 January 2018
48	COLL 4.5.7R(8) and (9) and COLL 8.3.5AR(5) and (6)	R	An <i>authorised fund manager</i> is not required to include the information prescribed by COLL 4.5.7R(8) and (9) or COLL 8.3.5AR(5) and (6) in its annual long report or in a composite report in respect of any <i>annual accounting period</i> ending before 30 September 2019.	From 30 September 2019	30 September 2019
Amendments to COLL made by the Money Market Funds Regulation Instrument 2018					
48	Each and every rule in COLL amended or deleted by the Money Market Funds Regulation Instrument 2018	R	A <i>scheme</i> which satisfies the conditions in either COLL 5.9.3R or COLL 5.9.5R immediately before 21 July 2018, and in respect of which an application for authorisation as a <i>regulated money market fund</i> needs to be submitted by 21 January 2019 in accordance with article 44 of the <i>Money Market Funds Regulation</i> , shall continue to comply with the provisions of the COLL sourcebook that apply to it, or in relation to it, as at 20 July 2018 until such time as it is a <i>regulated money market fund</i> .	From 21 July 2018 to 21 March 2019	21 July 2018
Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019					
49	COLL 4.2.5R(3)(c-b), (c-a) and (o), and COLL 4.2.6G(1A)	R	The <i>rules and guidance</i> specified in column (2) apply: (1) from 7 May 2019 in respect of any <i>authorised fund</i> which is authorised on or after that date; and	From 7 May 2019 to 7 August 2019	7 May 2019

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<p>(2) from 7 August 2019 in respect of any <i>authorised fund</i> which is authorised before 7 May 2019.</p>					
<p>Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020</p>					
50	COLL 9.3.5D	D	COLL 9.3.5D applies from the first date on which the <i>scheme's annual report and accounts</i> is (or is due to be) published on or after 1 July 2020.	From 1 July 2020	1 July 2020
<p>Amendments made by the Exiting the European Union: Handbook (Amendments) Instrument 2020</p>					
51	COLL 5.2.23R(1)	R	<p>[For the purpose of the <i>rule</i> specified in column (2),] an approved counterparty includes:</p> <p>(a) a person who, as a result of its authorisation in an <i>EEA State</i>, can enter into the transaction as <i>principal off-exchange</i>;</p> <p>(b) a <i>CCP</i> that is authorised in that capacity for the purpose of <i>EU EMIR</i> as it had effect immediately before <i>IP completion day</i>; and</p> <p>(c) a <i>CCP</i> that is recognised in that capacity in accordance with the process set out in article 25 of <i>EU EMIR</i> as it had effect immediately before <i>IP completion day</i>.</p>	[<i>IP completion day</i> to 31 December [2023]]	[Date of coming into force of the instrument]
<p>Amendments made by the Collective Investment Schemes Sourcebook (Bearer Certificates) Instrument 2021</p>					
52	TP 1.1(53)R to (54)G	R	In TP 1.1(53)R and 1.1(54)R, “outstanding bearer share” and “the surrender year” have the meanings given in the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346).	From 30 April 2021 to the end of 1 January 2022	30 April 2021
53	COLL 3.2.6R; COLL 4.4.4R; and COLL 4.4.12R	R	<p>(1) This <i>rule</i> applies to an <i>ICVC</i> which has one or more <i>outstanding bearer shares</i> in <i>issue</i> during the <i>surrender year</i>.</p> <p>(2) If immediately before 2 January 2021 the <i>instrument constituting the fund</i> contained a statement pursuant to COLL 3.2.6R setting out how the <i>holders</i> of <i>bearer certificates</i> are to identify themselves, the arrangements specified in that statement continue to apply to the extent necessary during the <i>surrender year</i> subject to:</p> <p>(a) the <i>OEIC Regulations</i>; and</p> <p>(b) any changes to those arrangements made in accordance with the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346), the <i>OEIC Regulations</i>, the <i>rules</i>, the <i>instrument constituting the fund</i> and the <i>prospectus</i>.</p> <p>(3) Any procedures identified in the <i>prospectus</i> in relation to the operation of <i>bearer certificates</i> pur-</p>	From 30 April 2021 to the end of 1 January 2022	30 April 2021

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			<p>suant to COLL 4.2.5R(5) continue to apply to <i>outstanding bearer shares</i> during the <i>surrender year</i> subject to:</p> <p>(a)the <i>OEIC Regulations</i>; and</p> <p>(b)any changes to that operation made in accordance with the Bearer Certificates (Collective Investment Schemes) Regulations 2020, the <i>OEIC Regulations</i>, the <i>rules</i>, the <i>instrument constituting the fund</i> and the <i>prospectus</i>.</p> <p>(4)Subject to the provisions of the Bearer Certificates (Collective Investment Schemes) Regulations 2020 and the <i>OEIC Regulations</i>, the amendments made to COLL 4.4.4R(3) and COLL 4.4.12R(1) are to be disregarded in relation to <i>outstanding bearer shares</i> in <i>issue</i> during the <i>surrender year</i>.</p>		
54	TP 1.1(53)R	G	<p>The Bearer Certificates (Collective Investment Schemes) Regulations 2020 set out certain requirements relating to the conversion and cancellation of <i>outstanding bearer shares</i> during the <i>surrender year</i>.</p>	From 30 April 2021	30 April 2021
55	TP 1.1(56)R	G	<p>(1)<i>Schemes</i> which issue <i>bearer certificates</i> create significant risks in relation to <i>money laundering</i> and <i>financial crime</i>. These risks are relevant both to the protection of <i>participants</i> in such <i>schemes</i> and to the constitution and management arrangements for a <i>scheme</i>.</p> <p>(2)Paragraph (3) applies where a <i>scheme</i> which is recognised under section 272 of the <i>Act</i> either issues or has issued <i>bearer certificates</i> to participants in the <i>United Kingdom</i> that have not been cancelled on or before 1 January 2022.</p> <p>(3)The <i>FCA</i> is of the view that a <i>scheme</i> within (2) is unlikely to satisfy the requirements for recognition set out in section 272 of the <i>Act</i> or, alternatively, that it is unlikely to be desirable in the interests of the <i>participants</i> in the <i>scheme</i> for the <i>scheme</i> to continue to be recognised.</p> <p>(4)Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing required the Member States of the European Union to take measures to prevent the misuse of bearer shares. As such, the <i>FCA</i> expects most <i>schemes</i> and <i>sub-funds</i> which are temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019 and the <i>operators</i> of such <i>schemes</i> or <i>sub-funds</i> to be subject to relevant national measures implementing the Directive.</p>	From 30 April 2021	30 April 2021

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
56	TP 1.1(55)G and COLL 9.4.4R which was deleted by the Collective Investment Schemes Sourcebook (Bearer Certificates) Instrument 2021.	R	<p>(1) Paragraphs (2) to (4) apply to:</p> <p>(a) the <i>operator</i> of a <i>scheme</i> or <i>sub-fund</i> temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019; and</p> <p>(b) the <i>operator</i> of a <i>scheme</i> recognised under section 272 of the <i>Act</i>.</p> <p>(2) An <i>operator</i> within (1) must maintain facilities in the <i>United Kingdom</i> at which the <i>unitholder</i> of a <i>bearer certificate</i> may obtain free of charge:</p> <p>(a) payment of dividends; and</p> <p>(b) details or copies of any notices which have been given or sent to <i>participants</i> in the <i>scheme</i> or <i>sub-fund</i>.</p> <p>(3) The <i>operator</i> must state:</p> <p>(a) the nature of the right represented by the <i>units</i> in the <i>scheme</i> or <i>sub-fund</i>; and</p> <p>(b) whether <i>persons</i> other than <i>unitholders</i> can vote at meetings of <i>unitholders</i> and, if so, who those <i>persons</i> are.</p> <p>(4) The facilities maintained by the <i>operator</i> of the <i>scheme</i> or <i>sub-fund</i> must also allow a <i>participant</i>:</p> <p>(a) to surrender any <i>bearer certificates</i> held by the <i>unitholder</i> in exchange for registered <i>units</i> in the <i>scheme</i> or <i>sub-fund</i>; and</p> <p>(b) where relevant, to provide the details necessary for an entry to be made in the appropriate <i>register</i> of <i>participants</i> for the <i>scheme</i> or <i>sub-fund</i>.</p>	From 30 April 2021	30 April 2021
Amendments made by the Long-Term Asset Fund (Amendment) Instrument 2023					
57	COLL 15.3.6R(6)(3)	R	<p>The <i>authorised fund manager</i> of a <i>long-term asset fund</i>, in respect of which an <i>authorisation order</i> is in force on 3 July 2023, is not required to comply with the <i>rule</i> specified in column (2) until:</p> <p>(a) the <i>instrument constituting the fund</i> is next updated; or</p> <p>(b) 3 July 2024, whichever is earlier.</p>	From 3 July 2023 to 3 July 2024	3 July 2023
58	COLL 15.4.5R(16)(10A)		<p>The <i>authorised fund manager</i> of a <i>long-term asset fund</i>, in respect of which an <i>authorisation order</i> is in force on 3 July 2023, is not required to comply with the <i>rule</i> specified in column (2) until:</p> <p>(a) the prospectus is next updated; or</p> <p>(b) 3 July 2024, whichever is earlier.</p>	From 3 July 2023 to 3 July 2024	3 July 2023
Amendments made by the Sustainability Labelling and Disclosure of Sustainability-Related Financial Information Instrument 2023					

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
59	The <i>rules</i> and amendments referred to in COLL TP 1 60R, 62R and 63R.	G	The effect of ESG 4.1.1R(2) is that the <i>authorised fund manager</i> of an <i>authorised fund</i> cannot use a <i>sustainability label</i> before 31 July 2024.	From 28 November 2023 to 31 July 2024	28 November 2023
60	COLL 4.2.5R(26B)(a), COLL 8.3.4R(18C)(1) and COLL 15.4.5R(28A)(1)	R	The <i>authorised fund manager</i> is not required to comply with a <i>rule</i> specified in column (2) until the date on which a <i>sustainability label</i> is first used in relation to the <i>authorised fund</i> .	From 28 November 2023 until the date on which a <i>sustainability label</i> is first used in relation to the <i>authorised fund</i> .	28 November 2023
61	COLL 4.2.5R(26B)(b), COLL 8.3.4R(18C)(2) and COLL 15.4.5R(28A)(2)	R	Where a <i>sustainability label</i> is not used in relation to an <i>authorised fund</i> , but the <i>authorised fund</i> uses the terms in ESG 4.3.2R(2) under ESG 4.3.2R(1), the <i>authorised fund manager</i> is not required to comply with a <i>rule</i> specified in column (2) until 2 December 2024.	From 28 November 2023 to 2 December 2024	28 November 2023
62	The amendments to COLL 4.5.7R, COLL 8.3.5AR and COLL 15.5.3R	R	An <i>authorised fund manager</i> is not required to include the information prescribed by the amendments made to the <i>rules</i> specified in column (2) in its annual long report or (if applicable) its annual report in respect of any <i>annual accounting period</i> ending before Part B of the <i>authorised fund's public product-level sustainability report</i> is first published in accordance with ESG 5.4.3R.	From 28 November 2023 to the end of the <i>annual accounting period</i> during which Part B of the <i>authorised fund's public product-level sustainability report</i> is first published in accordance	28 November 2023

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
63	The amendments to COLL 4.5.8R, COLL 8.3.5BR and COLL 15.5.5R	R	An <i>authorised fund manager</i> is not required to include the information prescribed by the amendments made to the <i>rules</i> specified in column (2) in its half-yearly long report or (if applicable) its half-yearly report in respect of any <i>half-yearly accounting period</i> ending before Part B of the <i>authorised fund's public product-level sustainability report</i> is first published in accordance with ESG 5.4.3R.	with ESG 5.4.3R. From 28 November 2023 to the end of the <i>half-yearly accounting period</i> during which Part B of the <i>authorised fund's public product-level sustainability report</i> is first published in accordance with ESG 5.4.3R.	28 November 2023
Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2024					
64	COLL 4.4.1AR, COLL 4.4.2AR, COLL 4.4.2BR and COLL 4.4.2CR and the amendments to COLL 4.4.5R, COLL 4.4.6R, COLL 4.4.8R and COLL 4.4.11R	R	The <i>rules</i> and amendments to the <i>rules</i> specified in column (2) apply only to a meeting held, or due to be held, on or after 3 June 2024.	2 April 2024 until the end of 2 June 2024	2 April 2024
Amendments made by the Collective Investment Schemes (Schemes Authorised in Approved Countries) Instrument 2024					
65	The amendments to COLL 9.4	R	The amendments to the <i>rules</i> specified in column (2) do not apply to a <i>TP UCITS qualifier</i> in relation to a <i>scheme</i> recognised under Part 6 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019.	From 31 July 2024	31 July 2024

Schedule 1

Record keeping requirements

Sch 1.1 G

1 Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COLL Transitional Provision 3	Election or re- vocation to comply with <i>CIS</i>	Details	At election or re- vocation	6 years
COLL Transitional Provision 14	Election for early compliance with the instrument	Details	At election	6 years
COLL 4.4.11 R (5)	Minutes of meet- ings (AFM)	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
COLL 6.2.5 R (1)	<i>Issues and can- cellations of un- its</i> (AFM)	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
COLL 6.4.6 R (4)	Instruments of Transfer (<i>person</i> responsible for the register)	Full details	From re- gistration	6 years
COLL 6.6.6 R (1)	General record- keeping obliga- tions (AFM)	Such as to dem- onstrate com- pliance with the <i>rules</i> in <i>COLL</i>	As implicit from the rules in <i>COLL</i>	6 years
COLL 6.6.6 R (2)	<i>Units</i> held, ac- quired or dis- posed of (AFM)	Daily record of <i>units</i> held, ac- quired or dis- posed of by the AFM	As implicit in <i>rules</i> in <i>COLL</i>	6 years
COLL 6.6.6 R (3)	Dilution record- keeping obliga- tions (AFM)	How the AFM calculates and es- timates <i>dilution</i> and its policy and method for determining the amount of any <i>dilution levy</i> or <i>dilution ad- justment</i>	As implicit from the rules in <i>COLL</i>	6 years
COLL 6.6.12 R (3)	General record- keeping obliga- tions (<i>de- pository</i>)	Such as to dem- onstrate com- pliance with the <i>rules</i> in <i>COLL</i>	As implicit from the rules in <i>COLL</i>	6 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COLL 6.13.2 R	Portfolio <i>transactions</i> relating to a <i>UCITS</i>	Full details	After transaction	5 years
COLL 6.13.3 R	Subscription and <i>redemption</i> orders	Full details	After receipt of order	5 years
COLL 6.13.4 R	Records referred to in COLL 6.13.2 R and COLL 6.13.3 R	Full details	After termination of authorisation of <i>UCITS management company</i>	Outstanding term of 5 year period
COLL 7.8.4R(4)	The decision of the <i>governing body</i> of the <i>authorised fund manager</i>	The decision to create a <i>side pocket class</i> and the reasons for it	As implicit from the <i>rules</i> in <i>COLL</i>	5 years
COLL 8.3.8 R (2)	Minutes of meetings (AFM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 8.5.2 R (3)(e)	General record keeping obligations (AFM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>
COLL 8.5.2 R (3)(f)	<i>Units</i> held, acquired or disposed of (AFM)	Daily record of <i>units</i> held, acquired or disposed of by the AFM	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 8.5.4 R (2)(h)	General record keeping obligation (<i>depository</i>)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>
COLL 8.5.10 R (4)	<i>Issues</i> and <i>cancellations</i> of <i>units</i> (AFM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>
COLL 14.3.6R	Dealings with an advisory committee	Details	As implicit from the <i>rules</i> in <i>COLL</i>	5 years
COLL 15.2.6R(3)	The <i>depository's</i> determination	The determination and the reasons for making it	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 15.5.-12BR(1)	Minutes of meetings (AGM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 15.5.-12BR(2)	Minutes of meetings of all proceedings to which COLL 15.5.-10BR and COLL 15.5.12AR are relevant	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 15.5.12R(2)	Minutes of meetings (AFM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
COLL 15.7.2R(3)(e)	General record keeping obligations (AFM)	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COLL 15.7.2R(3)(f)	<i>Units held, acquired or disposed of (AFM)</i>	Daily record of <i>units held, acquired or disposed of by the AFM</i>	As implicit from the <i>rules in COLL</i>	6 years
COLL 15.7.6R(2)(g)	General record keeping obligation (depository)	Full details	As implicit from the <i>rules in COLL</i>	As implicit from the <i>rules in COLL</i>
COLL COLL 15.7.-12BR(3)(e)	Instruments of Transfer (<i>person responsible for the register</i>)	Full details	From registration	6 years
COLL 15.8.5R(4)	<i>Issues and cancellations of units (AFM)</i>	Full details	As implicit from the <i>rules in COLL</i>	As implicit from the <i>rules in COLL</i>
COLL TP 1.1.16	Election to comply with COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5D R as those rules were in force on 5 March 2010	Details	At election	6 years

Schedule 2

Notification requirements

Sch 2.1 G

This schedule sets out the notification requirements detailed in *COLL* in respect only of notifications to be provided to the *FCA*. These notification requirements, it should be noted, are in addition to the notifications which must be made to the *FCA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) and under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).

Sch 2.2 G

1 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COLL</i> Transitional provision 3	Election or revocation to comply with CIS	Details and the date from which it is to take effect	At election or revocation	Immediate
<i>COLL</i> Transitional Provision 14	Election for early compliance with the instrument	Details and the date from which it is to take effect	At election	Immediate
<i>COLL</i> 4.2.3 R (1)(b)	<i>Prospectus</i> and any revisions thereto	Copy provided	<i>Marketing scheme</i>	Before <i>marketing</i> begins
<i>COLL</i> 4.2.3A R (1)(b)	Copy of <i>prospectus</i> of the <i>master UCITS</i>	Full details, together with any amendments	On publication	Immediately on publication
<i>COLL</i> 4.2.3B R (1)	<i>Prospectus</i> of the <i>qualifying master scheme</i> of a <i>feeder NURS</i>	Copy provided	Upon request by the <i>FCA</i>	Immediate
<i>COLL</i> 4.5.14 R (2)(d)	Annual and half yearly reports	Copy of report	End of annual or <i>half-yearly accounting period</i>	Immediately on publication
<i>COLL</i> 4.5.15 R (1)(b)	Copies of the annual and half-yearly long reports of the <i>master UCITS</i>	Full details	End of annual or <i>half-yearly accounting period</i>	Immediately on publication

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COLL 4.5.16 R (1)	Annual and half-yearly long report (or nearest equivalent documents for a <i>qualifying master scheme</i> that is a <i>recognised scheme</i>) of the <i>qualifying master scheme</i> of a <i>feeder NURS</i>	Copy provided	Upon request by the <i>FCA</i>	Immediate
COLL 4.7.7 R (2))	<i>Key investor information document</i>	Full details, together with any amendments	On first use	Immediate
COLL 4.7.7 R (3)	<i>Key investor information document</i> of the <i>master UCITS</i>	Full details, together with any amendments	On first use	Immediate
COLL 6.5.3 R (5)	Change of <i>ACD</i> , <i>directors</i> or <i>controller</i> of <i>ACD</i> or a corporate <i>director</i>	Details	Occurrence	Immediate
COLL 6.6.7 R	Capital of <i>ICVC</i>	Details if capital: (a) falls below minimum or (b) exceeds maximum	Occurrence	Immediate
COLL 6.9.11 R	Change to <i>ICVC</i> or to one of its officers	Details	Occurrence	14 days
COLL 6.12.3 R	Risk management process	Details in COLL 6.12.3 R (2)(a) and COLL 6.12.3 R (2)(b) and any material alterations thereof	On first use of process	On a regular basis and at least annually
COLL 6.12.6R(2)	Material change to the risk management process	Full details of change	On first use of amended process	Immediate
COLL 7.2.1 R (2) & COLL 7.2.1R (5)	Suspension or resumption of <i>dealing</i>	Details including reason for suspension	Occurrence	Immediate
COLL 7.3.5 R (5)	Winding up a solvent <i>ICVC</i> or terminating a solvent <i>ICVC sub-fund (Directors)</i>	Solvency statement	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	Within 21 days of notice given under regulation 21 of <i>OEIC Regulations</i>
COLL 7.3.7 R (9)	Winding up a solvent <i>ICVC</i> or <i>sub-fund</i> of an <i>ICVC (Depositary)</i>	Completion of winding up or termination of a <i>sub-fund</i>	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	As soon as reasonably practical after winding up completed

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COLL 7.3.8 R (6)	Winding up a solvent <i>ICVC</i> (<i>ACD</i>)	Final accounts	Completion of winding up	Four months
COLL 7.3.8 R (6)	Winding up a solvent <i>ICVC sub-fund</i> (<i>ACD</i>)	Termination account and auditor's report	Termination of <i>sub-fund</i>	Four months
COLL 7.4.4R (6)	Winding up of an <i>AUT</i> or an <i>AUT sub-fund</i> (<i>Trustee</i>)	Completion of winding up	Winding up of an <i>AUT</i>	Immediate
COLL 7.4.5 R (5)	Winding up an <i>AUT</i> or <i>AUT sub-fund</i>	Annual reports of the <i>manager</i> and <i>trustee</i>	End of final accounting period	Four months
COLL 7.4A.5 R (5)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i> (<i>Authorised contractual scheme manager</i>)	Solvency statement	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i>	Within 21 <i>days</i> of notice under section 261Q of the <i>Act</i> or within 21 <i>days</i> of request under section 261W of the <i>Act</i> .
COLL 7.4A.6 R (6)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i> (<i>Depositary</i>)	Completion of winding up	Winding up	Immediate
COLL 7.4A.9 R (7)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i>	Annual reports of <i>authorised contractual scheme manager</i> and <i>depositary</i>	End of final accounting period	Four months
COLL 7.7.22 R	Confirmation of the completion of the merger transfer	Details of completion	On completion of transfer	Immediate
COLL 7.8.37R	Suspension or resumption of <i>dealing</i>	Details including reason for suspension	Occurrence	Immediate
COLL 8.3.2 R	<i>Prospectus</i> and revisions	Full documents	Before marketing commences	Immediate
COLL 8.3.5 R (6)	Annual and half yearly reports	Copy of report	End of annual or <i>half-yearly accounting period</i>	Immediately on publication
COLL 8.6.3 R (3) & COLL 8.6.3 R (5)	Suspension or resumption of <i>dealing</i> (<i>AFM</i>)	Details including reason for suspension	Occurrence	Immediate
COLL 9.3.1 D	Notification of a <i>scheme</i> constituted in a <i>designated territory</i>	Prescribed details	Intention to market <i>scheme</i> in <i>UK</i>	As implicit from <i>rules</i> in <i>COLL</i>

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COLL 9.3.1 D	Application under section 272 of the <i>Act</i>	Details	Intention to market <i>scheme</i> in the <i>UK</i>	Up to 6 months before commencing marketing
COLL 9.3.5D	Annual certificate of compliance for a <i>scheme</i> recognised under section 272 of the <i>Act</i>	Details in COLL 9.3.5D(1)	Date on which the <i>annual report and accounts</i> of the <i>scheme</i> is (or is due to be) published (see COLL 9.3.5D(2))	One month
COLL 11.3.9 R	Identity of investing <i>feeder UCITS</i>	Full details	After investment	Immediate
COLL 11.4.3 R	Notification of irregularities relating to a <i>master UCITS</i>	Full details	Detection	Immediate
COLL 14.2.1R	Registration as a charity with the Charity Commission	Details	On registering as a charity with the Charity Commission	Without undue delay
COLL 14.2.2R	De-registration as a charity with the Charity Commission	Details	On de-registering as a charity with the Charity Commission	Without undue delay
COLL 15.4.2R	<i>Prospectus</i> and revisions	Full documents	Before marketing commences	Immediate
COLL 15.5.2R(5)	Annual, half yearly and quarterly reports	Copy of report	End of annual or <i>half-yearly accounting period</i> , or <i>quarterly reporting period</i>	Immediately on publication
COLL 15.10.3R(3) and (8)	Suspension and resumption of <i>dealing</i> (AFM)	Details, including reason for suspension	Occurrence	Immediate

Schedule 3

Fees and other required payments

Sch 3.1 G

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Sch 3.2 G

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Sch 4.3 G
[deleted]

Schedule 5

Rights of action for damages

Sch 5.1 G

The table below sets out the rules in *COLL* contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed For private person, the rule may be actionable by a private person under section 138D unless a Yes appears in the column headed Removed. A Yes in the column headed Removed indicates that the *FCA* has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

- (1) any individual, except when acting in the course of carrying on a regulated activity; and
- (2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

Sch 5.2 G

1. Actions for damages: the New Collective Investment Schemes Sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action section 138D		
			For private person?	Removed	For other person?
All rules in <i>COLL</i>			Yes	No	No

Schedule 6

Rules that can be waived

Sch 6.1 G

1. The rules in *COLL* can be *waived* by the *FCA* under sections 138A and 138B, 250 or 261L of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (Modification or waiver of *FCA* rules), except *COLL* 3.2.8R (UCITS obligations) and *COLL* 6.9.9R (Restrictions of business for UCITS management companies).

Sch 6.2 G

[deleted]

