

Chapter 5

Investment and borrowing powers

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

Application

5.6.1

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- (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

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- (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.

5.6.3

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Prudent spread of risk

- (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.

5.6.4

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Investment powers: general

- (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

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- (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

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- (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

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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

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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

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- (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

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- (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

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- (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

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- (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

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- (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

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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

5.6.19

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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 5.5.4R (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.