

Chapter 7

Suspension of dealings,
termination of authorised
funds and side pockets

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

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- (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

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- (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

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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 <i>FCA</i> approval; - or one month having passed after submitting the requisite notice under section 261Q of the <i>Act</i> without the <i>authorised contractual scheme manager</i> or <i>depository</i> having received from the <i>FCA</i> a warning notice under section 261R in respect of the proposal. <p>In a section 261W case, the <i>authorised contractual scheme manager</i> or <i>depository</i> receives an indication from the <i>FCA</i> that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the <i>ACS</i>, the <i>FCA</i> will agree to the request to wind up the <i>ACS</i>.</p>	<p>N + one <i>month</i> or R + one <i>month</i></p>	<p>Section 261Q of the <i>Act</i> (in a section 261Q case)</p> <p>7.4A.4R(3)(c) to (e) (in a section 261W case)</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 <i>FCA</i></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 W/U	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

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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*;

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- (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 both (a) and (b) 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).
- (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

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- (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* into court (or, in Scotland, as the court may direct), subject to the *depository* having a right to retain any expenses properly incurred by him relating to that payment.
- (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*.

7.4A.7

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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.

Duty to ascertain liabilities

7.4A.8

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- (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

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- (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

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- (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

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- (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

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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*.