

Chapter 7

Suspension of dealings,
termination of authorised
funds and side pockets

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* also excludes any *recognised scheme* which is authorised under the *UCITS Directive* in an *EEA State* but was not a 'recognised scheme' under section 264 of the *Act* (Schemes constituted in other EEA States) immediately before *IP completion day*.
- (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).