

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 4)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance); and
 - (e) section 247 (Trust scheme rules); and
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2009.

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Notes

- E. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 4) Instrument 2009.

By order of the Board
26 February 2009

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Rights of unit classes

- 3.3.5 R ...
- (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:
- ...
- (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 ~~*currency class*~~ *of unit 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 “~~*currency class*~~ hedging transaction”).

Hedging of ~~*currency class units*~~ *unit classes*

- 3.3.5A R A ~~*currency class*~~ hedging transaction must:
- ...
- (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 ~~*currency class*~~ *of units* for which it is undertaken.

Guidance on hedging of ~~*currency*~~ *unit* classes

- 3.3.5B G (1) Before undertaking a ~~*currency 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 ~~*currency class units*~~; and
- ...
- (b) consult the *depository* about the adequacy of the systems and controls it uses to ensure compliance with *COLL* 3.3.5AR (Hedging of ~~*currency class units*~~ *unit classes*); and

- (c) consult the *scheme auditor* ... (in each case) without prejudice to *unitholders* of *classes* other than the relevant ~~currency~~ hedged class.
- (2) ~~Currency-class~~ 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 ~~currency-class 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 ~~currency 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 ~~currency class of units~~ should not be so large as to be speculative or to constitute an investment strategy.

...

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 ~~(d)~~ (e):
- (1) the *second scheme* must:
- ...
- (d) be authorised in another *EEA State* (provided the requirements of article 19(1)(e) of the *UCITS Directive* are met); or
- (e) be authorised by the competent authority of an *OECD* member country (other than another *EEA State*) which has:
- (i) signed the IOSCO Multilateral Memorandum of Understanding; and
- (ii) approved the *scheme's* management company, rules and depositary/custody arrangements;
- (provided the requirements of article 19(1)(e) of the *UCITS Directive* are met);

...

Qualifying non-UCITS collective investment schemes

- 5.2.14 G ...

- (3) In determining whether a *scheme* meets the requirements of article 19(1)(e) of the *UCITS Directive* for the purposes of *COLL 5.2.13R* (1)(d) or (e), 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 19(1)(e) of the *UCITS Directive*]

- (4) The requirement for supervisory equivalence, as described in article 19(1)(e) (first indent) of the *UCITS Directive*, also applies to *schemes* (that are not *UCITS schemes*) established in other *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*.