

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (WINDING UP AND
SUB-FUND TERMINATION AND MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2011**

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 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 248 (Scheme particulars rules);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to 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 2011.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Winding Up and Sub-fund Termination and Miscellaneous Amendments) Instrument 2011.

By order of the Board
24 February 2011

Annex

Amendments to the Collective Investments Schemes sourcebook (COLL)

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

Income allocation and distribution

6.8.3 R ...

(3A) The amount available for income allocations must be calculated by:

...

(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* 6.7.10R (Allocation of payments to income or capital);

(iv) taxation; ~~and~~

(v) the aggregate amount of *income property* included in *units issued* and *units cancelled* during the period; and

(vi) amounts determined by the authorised fund manager to be the reportable income of other *collective investment schemes*.

...

7.3 Winding up a solvent ICVC and terminating a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1 G ...

(4) *COLL* 7.3.3G gives an overview of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FSA rules*, assuming *FSA* approval.

...

Guidance on winding up or termination

7.3.3 G This table belongs to ~~COLL 7.3.3G~~ 7.3.1G(4) (Explanation of COLL 7.3)

<p>Summary of the main steps in winding up a solvent <i>ICVC</i> or terminating a <u>a</u> <i>sub-fund</i> under <i>FSA rules</i>, assuming <i>FSA</i> approval. Notes: N = Notice to be given to the <i>FSA</i> under regulation 21 of <i>OEIC Regulations</i> E = commencement of winding up or termination W/U = winding up FAP = final accounting period (<i>COLL 7.3.8R(4)</i>)</p>			
Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
...			
4	Normal business ceases; publish notices <u>notify unitholders</u>	E	7.3.6
...			
7	Send final account or termination account and auditor's report to the <i>FSA</i> & <i>unitholders</i>	Within 2 <u>4 months</u> of FAP	7.3.8(6)
...			

...

Consequences of commencement of winding up or termination

7.3.6 R ...

- (2) Once winding up or termination has commenced:
- (a) *COLL 6.2* (Dealing), *COLL 6.3* (Valuation and pricing) 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~~ cancel units, except in respect of the final cancellation under *COLL 7.3.7R(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 7.3.7R(5)*;

...

...

Manner of winding up or termination

7.3.7 R ...

- (5) On or before the date on which the final account is sent to *unitholders* in accordance with *COLL 7.3.8R* (Final account and termination account), the *ACD* must arrange for all units in issue to be cancelled and for the depositary 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).

...

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 7.3.7R(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.

Final account and termination account

7.3.8 R (1) Once the *ICVC's* affairs are ~~fully~~ wound up or termination of the *sub-fund* has been completed (including distribution or provision for distribution in accordance with *COLL 7.3.7R(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.

...

- (4) The final account must state the date on which the *ICVC's* affairs were ~~fully~~ 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.

...

- (6) Within ~~two~~ 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 *FSA* and to each *person* who was a *unitholder* (or the first named of joint *unitholders*) immediately before ~~its end~~ the winding up or termination commenced.

...

Reports and accounts

- 7.3.10 R (1) The *ACD* need not (as would be required under *COLL* 4.5.13R (Provision of short report)) ~~send to each *unitholder* a copy of any~~ prepare a short report relating to an *annual accounting period* or *half-yearly accounting period* which ~~began~~ begins after commencement of winding up or termination, if the *directors* of the *ICVC*, after consulting the *FSA* depository, have reasonably determined that this is not required in the ~~interest~~ interests of *unitholders*.
- (1A) The *ACD* must consult with the *depository* before determining that a short report is not required in the interests of *unitholders*.
- (2) Where (1) applies, a copy of the ~~short or~~ long report must be supplied free of charge to any *unitholder* upon request.
- (3) Where (1) applies, 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* 7.3.7R(5).
- 7.3.10A G (1) The effect of *COLL* 7.3.10R(1), if exercised by the *directors* of the *ICVC*, is that the *ACD* must continue to prepare annual and half-annual long reports and to make them available to *unitholders* in accordance with *COLL* 4.5.14R.
- (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.

...

7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of *COLL* 7.4

7.4.1 G ...

- (4) COLL 7.4.2AG gives an overview of the main steps in winding up an AUT or terminating a sub-fund under FSA rules, assuming FSA approval.

...

Guidance on winding up or termination

7.4.2A G This table belongs to COLL 7.4.1G(4) (Explanation of COLL 7.4)

<u>Summary of the main steps in winding up an AUT or terminating a sub-fund under FSA rules</u>			
<u>Notes: N = Notice to be given to the FSA under section 251 of the Act.</u>			
<u>E = commencement of winding up or termination</u>			
<u>W/U = winding up</u>			
<u>FAP = final accounting period (COLL 7.4.5R(4))</u>			
<u>Step number</u>	<u>Explanation</u>	<u>When</u>	<u>COLL rule (unless stated otherwise)</u>
<u>1</u>	<u>Receive FSA approval</u>	<u>N + one month</u> <u>On receipt of notice from the FSA</u>	<u>Section 251 of the Act</u>
<u>2</u>	<u>Normal business ceases; notify unitholders</u>	<u>E</u>	<u>7.4.3R</u>
<u>3</u>	<u>Trustee to realise and distribute proceeds</u>	<u>ASAP after E</u>	<u>7.4.4R(1) to (5)</u>
<u>4</u>	<u>Send annual long report of manager and trustee to the FSA</u>	<u>Within 4 months of FAP</u>	<u>7.4.5R(5)</u>
<u>5</u>	<u>Request FSA to revoke relevant authorisation order</u>	<u>On completion of W/U</u>	<u>7.4.4R(6)</u>

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 ~~paragraph~~ (2) and not otherwise:
- (a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) 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~~ cancel units, except in respect of the final cancellation under COLL 7.4.4R(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 6.2.7R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4.4R(1) or (2); and
 - (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 6.4.4R(1); and
 - (e) ...
- (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.

...

Manner of winding up or termination

- 7.4.4 R (1) Where COLL 7.4.3R(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 7.4.3R:
- (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 7.4.3R; 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* into court (or, in Scotland, as the court may direct), subject to the *trustee* having a right to retain any expenses properly incurred by him relating to that payment.

- (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* ~~may~~ 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 7.4.3R(2)(c)*, *COLL 7.4.3R(2)(d)*, ~~or~~ *COLL 7.4.3R(2)(e)* or *COLL 7.4.3R(2)(f)*, the *trustee* must notify the *FSA* in writing and at the same time the *manager* or *trustee* must request the *FSA* 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 7.4.4R(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.

Accounting and reports during winding up or termination

- 7.4.5 R (1) For any *annual* or *half-yearly accounting period* which ~~began~~ begins after commencement of the winding up or termination, the *manager* ~~*trustee* (after consulting the *manager* (if appropriate) and the *FSA*) may direct that~~ is not required to prepare a short report (*COLL 4.5.13R* (Provision of short report)) ~~may be dispensed with, provided that it has taken reasonable care to determine it has reasonably determined that the report is not required in the interests of the *unitholders*.~~
- (1A) The *manager* must consult the *trustee* before determining that a short

report is not required in the interests of *unitholders*.

- (2) Where (1) applies, a copy of the ~~short and~~ long report must be supplied free of charge to any *unitholder* upon request.
- (2A) Where (1) applies, 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 7.4.5R(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 7.4.4R(2)(b).
- (3) ~~The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of this rule. [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 ~~two~~ four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund*, the annual long reports of the *manager* and *trustee* must be published and sent to the FSA ~~and to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before its end.~~
- (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 G (1) The effect of COLL 7.4.5R(1), if exercised by the *manager* and *trustee*, 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 4.5.14R.
- (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.

Schedule 2 Notification requirements

2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<i>COLL 7.3.8 R (6)</i>	Winding up a solvent <i>ICVC (ACD)</i>	Final accounts	Completion of winding up	Two months <u>Four months</u>
<i>COLL 7.3.8 R (6)</i>	Winding up a solvent <i>ICVC sub-fund (ACD)</i>	Termination account and auditor's report	Termination of <i>sub-fund</i>	Two months <u>Four months</u>
...
<i>COLL 7.4.5 R (5)</i>	Winding up an <i>AUT</i> or <i>AUT sub-fund</i>	Annual reports of the <i>manager and trustee</i>	Annual reports of the <i>manager and trustee</i>	Two months <u>Four months</u>
...