

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (MISCELLANEOUS  
AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137R (Financial promotion rules);
    - (c) section 137T (General supplementary powers);
    - (d) section 139A (Power of the FCA to give guidance);
    - (e) section 247 (Trust scheme rules);
    - (f) section 248 (Scheme particulars rules);
    - (g) section 261I (Contractual scheme rules); and
    - (h) section 261J (Contractual scheme particulars rules);
  - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
  - (3) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. (1) Part 1 of Annex B (COBS) to this instrument comes into force on 4 February 2019.
- (2) Annex A (Glossary), Part 2 of Annex B (COBS), and Part 1 of Annex C (COLL) to this instrument come into force on 7 May 2019.
- (3) Part 2 of Annex C (COLL) to this instrument comes into force on 7 August 2019.

**Amendments to the Handbook**

- D. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A

Conduct of Business sourcebook (COBS)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

**Citation**

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019.

By order of the Board  
24 January 2019

**Annex A****Amendments to the Glossary of definitions**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

**Coming into force on 7 May 2019**

*comparator benchmark* as defined in *COLL 4.2.5R(3)(c-b)(iii)*.

*constraining benchmark* as defined in *COLL 4.2.5R(3)(c-b)(ii)*.

*target benchmark* as defined in *COLL 4.2.5R(3)(c-b)(i)*.

## Annex B

## Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

## Part 1: Coming into force on 4 February 2019

## 4 Communicating with clients, including financial promotions

## 4.1 Application

Who? What?

...

4.1.7 G ...

What? Modification relating to the KII Regulation

4.1.7A R The rules in this chapter do not apply in relation to the form or content of a key investor information document, an EEA key investor information document or a NURS-KII document.

4.1.7B G (1) The KII Regulation specifies in an exhaustive manner the form and content of the key investor information document for a UCITS scheme.

(2) The form and content of a NURS-KII document is specified by COLL 4.7.3AR (Form and content of a NURS-KII document) and in COLL Appendix 2R (Modifications to the KII Regulation for KII-compliant NURS).

[**Note:** see article 3(1) of the *KII Regulation*]

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## Part 2: Coming into force on 7 May 2019

## 4 Communicating with clients, including financial promotions

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## 4.5 Communicating with retail clients (non-MiFID provisions)

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Authorised fund managers' communications in relation to benchmarks

4.5.12 R Subject to COBS 4.5.13R, an authorised fund manager must include in any

communication about an *authorised fund* to which this section applies:

- (1) a short explanation, in terms consistent with the relevant *prospectus*, of the choice and use of every *target benchmark*, *constraining benchmark* or *comparator benchmark* used in relation to the *scheme*;  
or
- (2) where no *target benchmark*, *constraining benchmark* or *comparator benchmark* is referred to in the *prospectus*, a statement to that effect and a short explanation of how investors can assess the performance of the *scheme*.

4.5.13 R Where an *authorised fund manager* includes, in any communication about an *authorised fund* to which this section applies, an indication of past performance for any *authorised fund* it manages, it must (in addition to complying with *COBS* 4.6.2R where applicable):

- (1) include the corresponding past performance record of any *target benchmark* or *constraining benchmark* referred to in the *prospectus* of the *scheme*; and
- (2) not include an indication of past performance for any index, indices or similar factor that is not referred to in the *prospectus* of the *scheme*.

4.5.14 R (1) Subject to paragraph (2), if a communication to which *COBS* 4.5.13R applies includes information comparing past performance of the *scheme* against one or more *comparator benchmarks*, the *authorised fund manager* must, for the period specified in paragraph (3) and in every subsequent communication it makes that is also subject to *COBS* 4.5.13R:

- (a) include a comparison against the same *comparator benchmark* or *comparator benchmarks*; and
- (b) not include a comparison against any other benchmark.
- (2) Paragraph (1) does not apply if such a comparison would not be compliant with *COBS* 4.5.13R as a result of a change to the *prospectus* of the *scheme*.
- (3) The period specified for the purposes of paragraph (1) is:
  - (a) twelve *months* after a one-off communication is made; or
  - (b) for as long as the communication remains available to the public in a *durable medium* and has not been superseded by a revised version.

4.5.15 R *COBS* 4.5.12R to *COBS* 4.5.14R do not apply in respect of any reference to a *comparator benchmark* that is not identified in the *prospectus* of the

relevant *scheme* when that reference appears in a communication that is:

- (1) used exclusively in the course of a personal visit, telephone conversation or other interactive dialogue; or
- (2) in response to a specific unsolicited request by a *client* for past performance to be compared with a particular *comparator benchmark*.

...

## TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision : dates in force</b>	<b>Handbook provisions: coming into force</b>
...					
2.- 1A	...				
<u>2.- 1B</u>	<u>COBS 4.5.12R to 4.5.15R</u>	<u>R</u>	<u>The rules specified in column (2) apply:</u>	<u>From 7 May 2019 to 7 August 2019</u>	<u>7 May 2019</u>
			(1) <u>from 7 May 2019 in respect of any <i>authorised fund</i> which is authorised on or after that date; and</u>		
			(2) <u>from 7 August 2019 in respect of any <i>authorised fund</i> which is authorised before 7 May 2019.</u>		
...					

## Annex C

## Amendments to the Collective Investment Schemes sourcebook (COLL)

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

## Part 1: Coming into force on 7 May 2019

## 4 Investor Relations

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## 4.2 Pre-sale notifications

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Table: contents of the prospectus

4.2.5 R This table belongs to *COLL* 4.2.2R (Publishing the prospectus).

...		
<b>Investment objectives and policy</b>		
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :	
	...	
	(c)	...
	<u>(c-b)</u>	<u>where:</u>
	(i)	<u>a target for a <i>scheme's</i> performance has been set, or a payment out of <i>scheme property</i> is permitted, by reference to a comparison of one or more aspects of the <i>scheme property</i> or <i>price</i> with fluctuations in the value or price of an index or indices or any other similar factor (a "<i>target benchmark</i>"); or</u>
	(ii)	<u>without being a <i>target benchmark</i>, arrangements are in place in relation to the <i>scheme</i> according to which the composition of the portfolio of the <i>scheme</i> is, or is implied to be, constrained by reference to the value, the price or the components of an index or indices or any other similar factor (a "<i>constraining benchmark</i>"); or</u>
	(iii)	<u>without being a <i>target benchmark</i> or a <i>constraining benchmark</i>, the <i>scheme's</i></u>

		performance is compared against the value or price of an index or indices or any other similar factor (a “ <i>comparator benchmark</i> ”),
		a statement providing sufficient information for investors to understand the choice and use of any <i>target benchmark, constraining benchmark</i> or <i>comparator benchmark</i> in relation to the <i>scheme</i> ;
	(c-a)	where no <i>target benchmark, constraining benchmark</i> or <i>comparator benchmark</i> is used, a statement to that effect and an explanation of how investors can assess the performance of the <i>scheme</i> ;
	...	
	(o)	information concerning the historical performance of the <i>scheme, comparing in particular its historical performance against each target benchmark and each constraining benchmark used in relation to the scheme,</i> presented in accordance with COBS 4.6.2R (the rules on past performance);
	...	

...

Guidance on contents of the prospectus

4.2.6 G (1) ...

(1A) In relation to COLL 4.2.5R(3)(c-b), the prospectus might explain, if it is the case, that one index or factor may be used for both a *target benchmark* and a *constraining benchmark* in relation to the same *scheme*.

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**TP 1 Transitional Provisions**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					



<b><u>Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019</u></b>						
49	<u>COLL 4.2.5R(3)(c-b), (c-a) and (o), and COLL 4.2.6G(1A)</u>	<u>R</u>	The <i>rules and guidance</i> specified in column (2) apply:		From 7 May 2019 to 7 August 2019	7 May 2019
			(1)	from 7 May 2019 in respect of any <i>authorised fund</i> which is authorised on or after that date; and		
			(2)	from 7 August 2019 in respect of any <i>authorised fund</i> which is authorised before 7 May 2019.		
...						

## Part 2: Coming into force on 7 August 2019

### 6 Operating duties and responsibilities

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#### 6.7 Payments

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Performance fees

##### 6.7.6 G ...

(2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with *COLL 6.7.4R*. In determining whether the performance fee is consistent the *authorised fund manager* should have regard to factors such as:

(a) ~~it should be calculated and paid after consideration of all other payments; [deleted]~~

...

...

6.7.6A      R      Any performance fee specified in the *prospectus* must be calculated on the basis of the *scheme's* performance after deduction of all other payments out of *scheme property*.

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