

## COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2020

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137D (FCA general rules: product intervention);
    - (c) section 137T (General supplementary powers);
    - (d) section 139A (Power of the FCA to give guidance);
    - (e) section 214 (General);
    - (f) section 247 (Trust scheme rules);
    - (g) section 248 (Scheme particulars rules);
    - (h) section 261I (Contractual scheme rules);
    - (i) section 261J (Contractual scheme particulars rules); and
    - (j) section 277A (Regular provision of information relating to compliance with requirements for recognition);
  - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
  - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s 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. This instrument comes into force on 1 July 2020.

### Amendments to the Handbook

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

### Notes

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

**Citation**

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020.

By order of the Board  
25 June 2020

## Annex

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

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

## 5 Investment and borrowing powers

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### 5.2 General investment powers and limits for UCITS schemes

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5.2.2 R This table belongs to *COLL 5.2.1R*

Rule	<i>ICVC</i>	<i>ACD</i>	Authorised fund manager of an <i>AUT</i> or <i>ACS</i>	Depositary of an <i>ICVC</i> , <i>AUT</i> or <i>ACS</i>	Authorised fund manager of an <i>AUT</i> or <i>ACS</i> , or <i>ACD</i> of an <i>ICVC</i> , that is a <i>regulated money market fund</i>
...					
<u>5.2.23-AG</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>
...					

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#### Investment powers: general

5.2.4 R The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections *COLL 5.2* to *COLL 5.5* that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the fund* may further restrict:

- (1) ...
- (2) the proportion of the *capital property* of the *UCITS scheme* that may be invested in assets of any description;

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#### OTC transactions in derivatives

- 5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* or, for the purposes of (1) only, executed by or on behalf of a *regulated money market fund*, must be:
- (1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
    - (a) an *eligible institution* or an *approved bank*; ~~or~~
    - (b) a person whose *permission* (including any *requirements* or *limitations*), as published in the *Financial Services Register*, or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;
    - (c) a CCP that is authorised in that capacity for the purposes of EMIR;
    - (d) a CCP that is recognised in that capacity in accordance with the process set out in article 25 of EMIR; or
    - (e) to the extent not already covered above, a CCP supervised in a jurisdiction that:
      - (i) has implemented the relevant G20 reforms on over-the-counter derivatives to at least the same extent as the United Kingdom; and
      - (ii) is identified as having done so by the Financial Stability Board in its summary report on progress in implementation of G20 financial regulatory reforms dated 25 June 2019;
- ...
- (4) ...

[**Note:** articles (8)(1)(b), 8(3) and 8(4) of the *UCITS eligible assets Directive*.

In relation to *COLL 5.2.23R(1)(e)*, see the table on page 3 of the Financial Stability Board's report of 25 June 2019 which is available here: <https://www.fsb.org/wp-content/uploads/P250619-2.pdf>

- 5.2.23-A G The non-EEA jurisdictions that fall within *COLL 5.2.23R(1)(e)* are Australia, Hong Kong, Japan, Singapore, Switzerland, and the United States of America.

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## 6 Operating duties and responsibilities

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## 6.2 Dealing

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### Property Authorised Investment Funds

6.2.23 R (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).

(1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:

- (a) the *body corporate* holds units in a unit trust scheme which holds shares in the *property authorised investment fund*; and
- (b) in their capacity as trustees of the unit trust scheme, the trustees are chargeable in the United Kingdom either to income tax or to corporation tax.

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## 6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

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### Control by the depositary over the scheme property

6.6.12 R (1) The *depositary* of an *authorised fund* is responsible for the safekeeping of all the *scheme property* (other than tangible movable property) entrusted to it and must:

- (a) ...;
- (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depositary*, its nominee, or (in the case of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*) a person retained by it under ~~COLL 6.6.15R(1)~~ COLL 6.6.15R(4) (Committees and delegation);

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(3) ...

(4) Where the *authorised fund* is a *UCITS scheme*, this rule applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of the *UCITS level 2 regulation*.

(5) Where the *authorised fund* is a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, this rule applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[Note: Articles 12 to 14 of the *UCITS level 2 regulation* and articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depositary* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*.]

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## 8 Qualified investor schemes

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### 8.5 Powers and responsibilities

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#### Duties of the depositary

8.5.4 R ...

(4) This rule applies to the *depositary* of a *scheme* managed by a *full-scope UK AIFM* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[Note: Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depositary* of a *qualified investor scheme* managed by a *small authorised UK AIFM*.]

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#### Property Authorised Investment Funds

8.5.12A R (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).

(1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:

- (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
- (b) in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.

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## 9 Recognised schemes

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### 9.3 Section 272 recognised schemes

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Preparation of a key information document in accordance with the PRIIPs regulation

#### 9.3.4 ...

##### Annual certificate of compliance

- 9.3.5 D (1) An operator of a *scheme* recognised under section 272 of the *Act* must provide a certificate to the *FCA* in writing that:
- (a) sets out what steps it has taken to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised *scheme* taking effect during the most recent financial year of the *scheme*; and
  - (b) explains whether, and if so how, any such changes, together with any changes to the *scheme* that have occurred during this period, may affect the *scheme's* ability to satisfy the requirements referred to in section 272(1)(d) of the *Act*.
- (2) The certificate must be provided to the *FCA* no later than:
- (a) one month following the publication of the *annual report and accounts* of the *scheme*; or
  - (b) if the publication of the *annual report and accounts* of the *scheme* is delayed, one month after the last day on which the publication of the *annual report and accounts* of the *scheme* was due.
- (3) The certificate must be signed by an authorised signatory of the operator.

- (4) The certificate may apply to multiple *sub-funds* in an *umbrella* that are recognised under section 272 of the Act, if the names of each relevant *sub-fund* and of the *umbrella* are clearly stated.
- (5) The certificate must be delivered to the FCA by:
  - (a) sending a copy by email addressed to [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk), including the subject line: “S.277A Certificate – [insert full name(s) of scheme]”; or
  - (b) by *post* to: Financial Conduct Authority, attn. S.277A Certificates, Fund Authorisations Team, Asset Management Department, Wholesale Supervision, 12 Endeavour Square, London E20 1JN, United Kingdom.

- 9.3.6 G An operator of a *scheme* recognised under section 272 of the Act need not provide a certificate under COLL 9.3.5D if it has already sent the required information to the FCA within the last 12 months as the result of:
- (1) a requirement relating to an application for recognition of the *scheme* under section 274(2)(c) of the Act;
  - (2) a direction relating to a proposed alteration of the *scheme* or to a change to the *operator*, *trustee* or *depository* under section 277(5)(b) of the Act; or
  - (3) a previous certificate being provided under section 277A of the Act.

- 9.3.7 G The operator of a *scheme* recognised under section 272 of the Act should seek advice from professionals with appropriate qualifications or professional knowledge, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the FCA under COLL 9.3.5D.

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**TP 1 Transitional Provisions**

**TP 1.1**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<b><u>Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020</u></b>					



<u>50</u>	<u>COLL 9.3.5D</u>	<u>D</u>	<u>COLL 9.3.5D applies from the first date on which the <i>scheme's annual report and accounts</i> is (or is due to be) published on or after 1 July 2020.</u>	<u>From 1 July 2020</u>	<u>1 July 2020</u>
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## Sch 2 Notification requirements

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### Sch 1 Notification requirements 2.2G

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
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<i>COLL 9.3.1D</i>	Application under section 272 of the Act	Details	Intention to market <i>scheme</i> in the UK	Up to 6 months before commencing marketing
<u>COLL 9.3.5D</u>	<u>Annual certificate of compliance for a <i>scheme</i> recognised under section 272 of the Act</u>	<u>Details in <i>COLL 9.3.5D(1)</i></u>	<u>Date on which the <i>annual report and accounts</i> of the <i>scheme</i> is (or is due to be) published (see <i>COLL 9.3.5D(2)</i>)</u>	<u>One month</u>
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