Collective Investment Schemes
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Collective Investment Schemes

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Chapter 1

Introduction
1.1 Applications and purpose

Application

1.1.1 (1) This sourcebook, except for COLL 9 (Recognised schemes), applies to:

   (a) investment companies with variable capital (ICVCs);
   
   (b) ACDs, other directors and depositaries of ICVCs;
   
   (c) managers and trustees of authorised unit trust schemes (AUTs);
   
   (cA) authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACs).
   
   (d) [deleted]

(2) COLL 9 applies to operators of schemes that are recognised schemes and to those seeking to secure recognised status for such schemes.

(3) COLL 11.5 (Auditors) also applies to auditors of master UCITS and feeder UCITS which are UCITS schemes.

(4) [deleted]

(5) COLL TP 1.1(48) contains transitional provisions that apply in relation to any scheme that will need to become a regulated money market fund in accordance with the Money Market Funds Regulation, and which operates as a scheme prior to 21 July 2018.

1.1.1A [deleted]

1.1.1B [deleted]

1.1.1C [deleted]

Purpose

1.1.2 (1) The general purpose of this sourcebook is to contribute to the FCA meeting its statutory objectives of the protection of consumers. It provides a regime of product regulation for authorised funds, which sets appropriate standards of protection for investors by specifying a number of features of those products and how they are to be operated.
(2) In addition, this sourcebook implemented part of the requirements of the UCITS Directive relevant to authorised funds and management companies, along with other requirements implemented in other parts of the Handbook.

**UCITS management company and product passport**

1.1.2A  
[deleted]

**The Collective Investment Schemes Information Guide**

1.1.3  
The Collective Investment Schemes Information Guide COLLG provides some general background material on the regulatory structure surrounding scheme regulation in the UK.
### 1.2 Types of authorised fund

#### 1.2.1 Types of authorised fund

An application for an authorisation order must propose that the scheme be one of the following types:

1. a UCITS scheme;
2. a non-UCITS retail scheme, including:
   1. a non-UCITS retail scheme operating as a fund of alternative investment funds (FAIF); and
   2. a non-UCITS retail scheme which is an umbrella with sub-funds operating as:
      1. FAIFs;
      2. standard non-UCITS retail schemes; or
      3. a mixture of (i) and (ii);
3. a qualified investor scheme; or
4. a long-term asset fund.

#### 1.2.1A Umbrella schemes

Any authorised fund, except for an ACS that is a limited partnership scheme, may be structured as an umbrella with separate sub-funds.

[Note: article 1(2) second paragraph of the UCITS Directive]

#### Types of authorised fund - explanation

1. UCITS schemes must in particular comply with:
   1. COLL 3.2.8 R (UCITS obligations); and
   2. the investment and borrowing powers rules for UCITS schemes set out in COLL 5.2 to COLL 5.5.

2. (a) Non-UCITS retail schemes are schemes that do not comply with all the conditions necessary to be a UCITS scheme.
   (b) A non-UCITS retail scheme is an AIF and must be managed by an AIFM.
   (c) The UK may, under the legislation which implemented article 43 of AIFMD, impose stricter requirements on
an AIFM or an AIF marketed to retail clients than the requirements that apply to an AIF marketed only to professional clients.

(d) This sourcebook contains the stricter requirements for an AIF which is a non-UCITS retail scheme.

(e) A full-scope UK AIFM must also comply with the requirements in FUND and any other applicable provisions of AIFMD.

(f) Non-UCITS retail schemes could become UCITS schemes, provided they are changed, so as to comply with the necessary conditions.

(g) Non-UCITS retail schemes operating as FAIFs have wider powers to invest in collective investment schemes than other non-UCITS retail schemes.

(2A) A non-UCITS retail scheme may also be structured as an umbrella with sub-funds operating as:

(a) FAIFs;

(b) standard non-UCITS retail schemes; or

(c) a mixture of (a) and (b).

In these cases, rules relating to investment powers and borrowing limits apply to each sub-fund as they would to a scheme.

(3) (a) Qualified investor schemes may only be promoted to:

(i) professional clients; and

(ii) retail clients who are sophisticated investors,

on the same terms as non-mainstream pooled investments.

(b) A qualified investor scheme is an AIF and must be managed by an AIFM.

(c) [deleted]

(d) This sourcebook contains the stricter requirements for an AIF which is a qualified investor scheme.

(e) A full-scope UK AIFM must also comply with the requirements in FUND and any other applicable provisions of AIFMD.

(f) Qualified investor schemes could change to become non-UCITS retail schemes or UCITS schemes.

(3A) (a) A long-term asset fund may be promoted only to:

(i) professional clients; and

(ii) retail clients who are sophisticated investors or certified high net worth investors,

on the same terms as non-mainstream pooled investments.

(b) A long-term asset fund is an AIF and must be managed by a full-scope UK AIFM (see COLL 15.2.2R (Authorised fund manager to be a full-scope UK AIFM)).

(c) Under the Act and the UK AIFM regime, the FCA is able to impose stricter requirements on an AIFM or an AIF marketed to
retail clients than the requirements that apply to an AIF marketed only to professional clients. This sourcebook contains stricter requirements for an AIF which is a long-term asset fund.

(d) A full-scope UK AIFM must also comply with the requirements in FUND and any other applicable provisions of the UK AIFM regime.

(e) A long-term asset fund could change to become a qualified investor scheme, a non-UCITS retail scheme or a UCITS scheme, provided it complies with the necessary conditions. The authorised fund manager of an LTAF may need to make significant changes to the LTAF’s constitution, objectives and investment powers for it to become a UCITS scheme or a non-UCITS retail scheme.

(f) A qualified investor scheme could become authorised as a long-term asset fund if the authorised fund manager operates, or proposes to operate, the scheme in accordance with the rules in COLL 15 (Long-term asset funds).

(g) The nature of the assets that are held (or expected to be held) by a long-term asset fund means that it will not be able to seek authorisation as a regulated money market fund, or to have the characteristics of such a fund without significant changes to its constitution, objectives and investment powers. See also article 6 of the Money Market Funds Regulation.

(4) The changes referred to in (2), (3) and (3A) require approval by the FCA.

UCITS schemes

A UCITS scheme is deemed to be established in the United Kingdom, irrespective of whether it has been established under the laws of England and Wales, Scotland or Northern Ireland.

[Note: article 4 of the UCITS Directive]

Master UCITS

A master UCITS that has two or more feeder UCITS as its only unitholders satisfies the requirement that a UCITS scheme must invest capital raised from the public.

[Note: article 58(4) of the UCITS Directive]

Pension feeder funds

(1) Except for (2), all provisions of the Handbook that apply:

(a) to a feeder UCITS are also applicable to a pension feeder fund that is constituted as a UCITS scheme; and

(b) to a feeder NURS are also applicable to a pension feeder fund that is constituted as a non-UCITS retail scheme.

(2) A pension feeder fund may not invest in units of an EEA UCITS scheme unless that scheme is a recognised scheme (see COLL 5.6.27R and COLL 5.8.2AR).
Chapter 2

Authorised fund applications
2.1 Authorised fund applications

Application

2.1.1 This chapter applies to any person seeking to arrange for the authorisation of a scheme.

Purpose

2.1.2 This chapter helps in achieving the statutory objectives of protecting consumers by ensuring that any application for authorisation of a fund meets certain standards.

Explanation

2.1.3 (1) This chapter sets out the requirements that a person must follow in applying for an authorisation order for a scheme under regulation 12 of the OEIC Regulations (Applications for authorisation), section 242 of the Act (Applications for authorisation of unit trust schemes) or section 261C of the Act (Applications for authorisation of contractual schemes).

(2) COLLG 3A (The FCA’s responsibilities under the Act) and COLLG 4A (The FCA’s responsibilities under the OEIC Regulations) provide more information on what the Act and the OEIC Regulations require in relation to ongoing notifications to the FCA.

Specific requirements on application

2.1.4 An application for an authorisation order in respect of an authorised fund must be:

(1) in writing in the manner directed and contain the information required in the application form available from the FCA;

(2) addressed for the attention of a member of FCA staff responsible for collective investment scheme authorisation matters; and

(3) delivered to the FCA’s address by one of the following methods:

   (a) posting; or

   (b) leaving it at the FCA’s address and obtaining a time-stamped receipt; or

   (c) delivery by hand to a member of FCA staff responsible for collective investment scheme authorisation matters.
2.1.5 [deleted]
3.1 Introduction

Application

3.1.1 This chapter applies to:

1. an authorised fund manager of an AUT, ACS or an ICVC;
2. any other director of an ICVC;
3. a depositary of an AUT, ACS or an ICVC; and
4. an ICVC,

where the AUT, ACS or ICVC is a UCITS scheme or a non-UCITS retail scheme.

Purpose

3.1.2 This chapter assists in achieving the statutory objective of protecting consumers. In particular:

1. COLL 3.2 (The instrument constituting the fund) contains requirements about provisions which must be included in the instrument constituting the fund to give a similar degree of protection for investors in an ICVC, AUT or ACS; and
2. COLL 3.3 (Units) provides rules and guidance which deal with the classes of units to ensure that investors in each class are treated equally.
3.2 The instrument constituting the fund

Application

3.2.1 This section applies to:

(1) an authorised fund manager of an AUT, ACS or ICVC;
(2) any other director of an ICVC;
(3) a depositary of an AUT, ACS or an ICVC;
(4) an ICVC; and
(5) a nominated partner;

except COLL 3.2.8 R(UCITS obligations), which applies only to an ICVC or to the authorised fund manager of an AUT or ACS where the ICVC, AUT or ACS is a UCITS scheme.

Relationship between the instrument constituting the fund and the rules

3.2.2 (1) The instrument constituting the fund must not contain any provision that:

(a) conflicts with any applicable rule;
(b) prevents units in the scheme being marketed in the United Kingdom; or
(c) is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units.

(2) Any power conferred by the rules on the ICVC, the authorised fund manager, any other director of the ICVC, or the depositary, whether in a sole or joint capacity, is subject to any restriction in the instrument constituting the fund.

The trust deed for AUTs

3.2.3 An AUT must be constituted by a trust deed made between the manager and the trustee.
The contractual scheme deed for ACSs

An ACS must be constituted by a contractual scheme deed made between the authorised contractual scheme manager and:

(1) the depositary, in the case of a co-ownership scheme; or

(2) the nominated partner, in the case of a limited partnership scheme.

Matters which must be included in the instrument constituting the fund

The statements and provisions required by ■ COLL 3.2.6 R (Table: contents of the instrument constituting the fund) must be included in the instrument constituting the fund, where appropriate.

The instrument constituting the fund: OEIC Regulations, Contractual Scheme Regulations and trust law requirements

(1) Several of the matters set out in ■ COLL 3.2.6 R are required to be included in the instrument constituting the fund under the OEIC Regulations, Contractual Scheme Regulations or as a consequence of relevant trust law. In addition, further statements are required if the scheme or the authorised fund manager are to take advantage of the powers under the rules in this sourcebook.

(2) Additional matters which are not contained in ■ COLL 3.2.6 R may be required to be included in the instrument constituting the fund in order to comply with the OEIC Regulations, (particularly Schedule 2 - Instrument of Incorporation), Contractual Scheme Regulations and for the purposes of making the scheme eligible under relevant tax, pensions, or charities legislation.

Table: contents of the instrument constituting the fund

This table belongs to ■ COLL 3.2.4 R (Matters which must be included in the instrument constituting the fund)

<table>
<thead>
<tr>
<th>Name of scheme</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Investment powers in eligible markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
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</table>

<table>
<thead>
<tr>
<th>Unitholder’s liability to pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
</tr>
</tbody>
</table>
3A A provision that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business.

3B A provision that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business.

**Base currency**

4 A statement of the *base currency* of the *scheme*.

**Valuation and pricing**

5 A statement setting out the basis for the valuation and pricing of the *scheme*.

**Duration of the scheme**

6 If the *scheme* is to be wound up after a particular period expires, a statement to that effect.

**Object of the scheme**

7 A statement:

   (1) as to the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest; and

   (2) that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of that property.

7A Where the *authorised fund* is a *qualifying money market fund*, a statement to that effect and a statement that the *authorised fund’s* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*.

[deleted]

**Government and public securities: investment in one issuer**

8 Where relevant, for a *UCITS scheme*, a statement in accordance with COLL 5.2.12 R (Spread: government and public securities) with the names of the individual states, local authorities or public international bodies issuing or guaranteeing the *transferable securities* or *approved money-market instruments* in which more than 35% in value of the *scheme property* may be invested.

**Classes of unit**

9 A statement:

   (1) specifying the *classes* of *unit* that may be issued, and for a *scheme* which is an *umbrella*, the *classes* that may be issued in respect of each *sub-fund*; and

   (2) if the rights of any *class of unit* differ, a statement describing those differences in relation to the differing *classes*.

**Authorised fund manager’s charges and expenses**

10 A statement setting out the basis on which the *authorised fund manager* may make a charge and recover expenses out of the *scheme property*.

**Issue or cancellation directly through the ICVC or depositary of an AUT or ACS**
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Where relevant, a statement authorising the issue or cancellation of units to take place through the ICVC or depositary of an AUT or ACS directly.</td>
</tr>
<tr>
<td>12</td>
<td>Where relevant, a statement authorising payment for the issue or cancellation of units to be made by the transfer of assets other than cash.</td>
</tr>
<tr>
<td>13</td>
<td>Where relevant, the restrictions which will apply in relation to the sale and redemption of units under COLL 6.2.16 R (Sale and redemption).</td>
</tr>
<tr>
<td>14</td>
<td>The manner in which votes may be given at a meeting of unitholders under COLL 4.4.8 R (Voting rights).</td>
</tr>
<tr>
<td>15</td>
<td>A statement authorising the person responsible for the register to charge for issuing any document recording, or for amending, an entry on the register, other than on the issue or sale of units.</td>
</tr>
<tr>
<td>16</td>
<td>A statement setting out the basis for the distribution or re-investment of income.</td>
</tr>
<tr>
<td>17</td>
<td>Where relevant, a provision for income equalisation.</td>
</tr>
<tr>
<td>18</td>
<td>A statement that where any holding of units by a unitholder is (or is reasonably considered by the authorised fund manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.</td>
</tr>
<tr>
<td>19</td>
<td>A statement of the proportion of a larger denomination share represented by a smaller denomination share for any relevant unit class.</td>
</tr>
<tr>
<td>20</td>
<td>A statement that the ICVC may (without prejudice to the requirements of regulation 21 of the OEIC Regulations (The Authority’s approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of unitholders, remove a director before his period of office expires, despite anything else in the ICVC’s instrument of incorporation or in any agreement between the ICVC and that director.</td>
</tr>
<tr>
<td>21</td>
<td>A statement that the person designated for the purposes of paragraph 4 of Schedule 4 to the OEIC Regulations (Share transfers) is the person who, for the time being, is the ACD of the ICVC.</td>
</tr>
<tr>
<td>22</td>
<td>A statement that charges or expenses of the ICVC or ACS may be taken out of the scheme property.</td>
</tr>
</tbody>
</table>
ICVCs: Umbrella schemes - principle of limited recourse

22A For an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose.

Co-ownership schemes: umbrella schemes - principle of limited recourse

22B For a co-ownership scheme which is an umbrella, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund.

AUTs: governing law for a trust deed

23 A statement that the trust deed is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.

AUTs: trust deed to be binding and authoritative

24 A statement that the trust deed:

(1) is binding on each unitholder as if it had been a party to it and that it is bound by its provisions; and

(2) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms.

AUTs: declaration of trust

25 A declaration that, subject to the provisions of the trust deed and all rules made under section 247 of the Act (Trust scheme rules) and for the time being in force:

(1) the scheme property (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of undivided shares in the scheme property represented by the units held by each unitholder; and

(2) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution).

AUTs: trustee’s remuneration

26 Where relevant, a statement authorising payments to the trustee by way of remuneration for its services to be paid (in whole or in part) out of the scheme property.

AUTs: responsibility for the register

27 A statement identifying the person responsible under the rules for the maintenance of the register.

ACSs: governing law for a contractual scheme deed

27A A statement that the contractual scheme deed is made under and governed by the law of England and Wales, or Scotland or Northern Ireland.

ACSs: contractual scheme deed to be binding and authoritative

27B A statement that the contractual scheme deed:

(1) is binding on each unitholder as if it had been a party to it and that it is bound by its provisions; and
27C A statement that, subject to the provisions of the contractual scheme deed and all rules made under section 261 of the Act (Contractual scheme rules) and for the time being in force:

1. the scheme property (other than sums standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of undivided shares in the scheme property represented by the units held by each unitholder;

2. the sums standing to the credit of the distribution account are held by the depositary to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution); and

3. the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants).

ACSs: ownership of scheme property

27D A statement identifying the person responsible under the rules for the maintenance of the register.

ACSs: responsibility for the register

27E For an ACS which is a UCITS scheme or a non-UCITS retail scheme, a statement that units may not be issued to a person other than a:

1. professional ACS investor;

2. large ACS investor; or

3. person who already holds units in the scheme.

ACSs: UCITS and NURS eligible investors

27F A statement that the authorised contractual scheme manager must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in paragraph 27E.

ACSs: UCITS and NURS transfer of units

27G (1) A statement whether the transfer of units in the ACS scheme is either:

(a) prohibited; or

(b) allowed

(2) Where transfer of units is allowed in accordance with (1)(b), a statement that units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a:

(a) professional ACS investor;

(b) large ACS investor; or

(c) person who already holds units in the scheme.

(3) For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.

ACSs: UCITS and NURS transfer of units
Co-ownership schemes: constitution

27H For a co-ownership scheme, a statement that the arrangements constituting the scheme are intended to constitute a co-ownership scheme as defined in section 235A(2) of the Act.

Co-ownership schemes: operator's powers

27I A statement that the operator of a co-ownership scheme is authorised to:

(1) acquire, manage and dispose of the scheme property; and

(2) enter into contracts which are binding on unitholders for the purposes of, or in connection with, the acquisition, management or disposal of scheme property.

Co-ownership schemes: winding-up

27J A statement that the operator and depositary of a co-ownership scheme are required to wind up the scheme if directed to do so by the FCA in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the Act.

Limited partnership schemes: participants

27K A statement that the limited partners, other than the nominated partner, are to be the participants in the scheme.

Limited partnership schemes: resignation of limited partners

27L A statement that the scheme is not dissolved on any person ceasing to be a limited partner or nominated partner provided that there remains at least one limited partner.

Limited partnership schemes: inability to operate as an umbrella

27M A statement that the limited partnership scheme prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the scheme property, with the effect that the scheme cannot be an umbrella.

Investment in overseas property through an intermediate holding vehicle

28 If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

3.2.7 [deleted]

UCITS obligations

3.2.8 (1) The instrument constituting a UCITS scheme may not be amended in such a way that it ceases to be a UCITS scheme.

(2) [deleted]

(3) [deleted]
3.3 Units

Application

3.3.1 This section applies to an authorised fund manager, an ICVC and the depositary of an AUT or ACS.

Classes of units

3.3.2 (1) The instrument constituting the fund may provide for different classes of unit to be issued in an authorised fund and, for a scheme which is an umbrella, provide that classes of units may be issued for each sub-fund.

(2) In order to be satisfied that COLL 3.2.2 R (Relationship between the instrument constituting the fund and the rules) is complied with, the FCA will take into account the principles in (a) to (c) when considering proposals for unit classes:

(a) a unit class should not provide any advantage for that class if that would result in prejudice to unitholders of any other class;

(b) the nature, operation and effect of the new unit class should be capable of being explained clearly to prospective investors in the prospectus; and

(c) the effect of the new unit class should not appear to be contrary to the purpose of any part of this sourcebook.

Currency class units

3.3.3 A currency class unit differs from other units mainly in that its price, having been calculated initially in the base currency, will be quoted, and normally paid for, in the currency of the designation of the class. Income distributions will also be paid in the currency of designation of the class.

Currency class units: requirements

3.3.4 For a currency class unit:

(1) the currency of the class concerned must not be the base currency (or, in the case of a sub-fund which, in accordance with a statement in the prospectus, is to be valued in some other currency, the currency of the class may be in the base currency, but must not be in that other currency);
(2) the price must be expressed in the currency of the class concerned;

(3) any distribution must be paid in the currency of the class concerned; and

(4) statements of amounts of money or values included in statements and in tax certificates must be given in the currency of the class concerned (whether or not also given in the base currency).

Rights of unit classes

3.3.5 (1) If any class of units in an authorised fund has different rights from another class of units in that fund, the instrument constituting the fund must provide how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class must be calculated.

(2) For an authorised fund which is not an umbrella, the instrument constituting the fund must not provide for any class of units in respect of which:

(a) the extent of the rights to participate in the capital property, income property or distribution account would be determined differently from the extent of the corresponding rights for any other class of units; or

(b) payments or accumulation of income or capital would differ in source or form from those of any other class of units.

(3) For a scheme which is an umbrella, the provisions in (2)(a) apply to classes of units in respect of each sub-fund as if each sub-fund were a separate scheme.

(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:

(a) the accumulation of income by way of periodical credit to capital rather than distribution; or

(b) charges and expenses that may be taken out of the scheme property or payable by the unitholders; or

(c) the currency in which prices or values are expressed or payments made; or

(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 class of 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 "class hedging transaction").

Hedging of unit classes

3.3.5A A class hedging transaction must:

(1) be undertaken in accordance with the requirements of COLL 5 (Investment and borrowing powers); and
Guidance on hedging of unit classes

(1) Before undertaking a 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 units; and
      (ii) explains the nature of the risks that such a transaction may pose to investors in all classes;

   (b) consult the depositary about the adequacy of the systems and controls it uses to ensure compliance with COLL 3.3.5A R (Hedging of unit classes); and

   (c) consult the scheme auditor and, where appropriate, depositary to determine how:

      (i) the transaction will be treated in the scheme’s accounts; and
      (ii) any consequential tax liability will be met;

   (in each case) without prejudice to unitholders of classes other than the relevant hedged class.

(2) 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 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 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 class of units should not be so large as to be speculative or to constitute an investment strategy.

Requirement: larger and smaller denomination shares in an ICVC

(1) This rule applies whenever the instrument of incorporation of an ICVC provides, in relation to any class, for smaller denomination shares and larger denomination shares.

(2) Whenever a registered holding includes a number of smaller denomination shares that can be consolidated into a larger denomination share of the same class, the ACD must consolidate the relevant number of those smaller denomination shares into a larger denomination share.

(3) The ACD may, to effect a transaction in shares, substitute for a larger denomination share the relevant number of smaller denomination shares, in which case (2) does not apply to the resulting smaller
denomination shareholding or holdings until immediately after the completion of the transaction.

Characteristics of larger and smaller denomination shares in an ICVC

3.3.7 Regulation 45 of the OEIC Regulations (Shares) allows the rights attached to a share in an ICVC of any class to be expressed in two denominations, in which case the ‘smaller’ denomination must be such proportion of the ‘larger’ denomination (a standard share) as is fixed by the ICVC’s instrument of incorporation as described in COLL 3.2.6R (19). This will enable holdings to consist of more or less than a complete number of larger denomination shares.

Sub-division and consolidation of units

3.3.8 (1) The directors of an ICVC or the authorised fund manager of an AUT or ACS may, unless expressly forbidden to do so by the instrument constituting the fund, determine that:

(a) each unit of any class is to be subdivided into two or more units; or

(b) units of any class are to be consolidated.

(2) The ICVC or the authorised fund manager of an AUT or ACS must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each unitholder (or the first named of joint unitholders) of any sub-division or consolidation under (1).

Guarantees and capital protection

3.3.9 If there is any arrangement intended to result in a particular capital or income return from a holding of units in an authorised fund, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

(1) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:

(a) unitholders and the authorised fund manager or depositary; or

(b) unitholders intended and not intended to benefit from the arrangement; and

(2) where, in accordance with any statement required by COLL 4.2.5R (27)(c)(iv) (Table: contents of the prospectus), action is required by the unitholders to obtain the benefit of any guarantee, the authorised fund manager must provide reasonable notice in writing to unitholders before such action is required.

Switching rights: umbrella schemes

3.3.10 (1) In accordance with section 235(4) of the Act (Collective investment schemes), the participants in a scheme which is an umbrella are entitled to exchange rights in one sub-fund for rights in another sub-fund of the umbrella.
(2) To satisfy (1), where any sub-fund in a scheme which is an umbrella has provisions in its prospectus limiting the issue of units in that sub-fund, the authorised fund manager should ensure that at least two sub-funds are able to issue units at any time. In the case of an umbrella consisting of a single sub-fund that limits the issue of units, where the ICVC or the authorised fund manager of an AUT or co-ownership scheme of such an umbrella intends to offer additional sub-funds, it should ensure that unitholders will have the right to switch at all times between two or more sub-funds in that umbrella.
Chapter 4

Investor Relations
4.1 Introduction

Application

4.1.1 This chapter applies to:

(1) an **authorised fund manager** of an AUT, ACS or an ICVC;

(2) any other **director** of an ICVC;

(3) a **depositary** of an AUT, ACS or an ICVC; and

(4) an **ICVC**,

where such AUT, ACS or ICVC is a **UCITS scheme** or a **non-UCITS retail scheme**.

Purpose

4.1.2 This chapter helps in achieving the **statutory objective** of protecting **consumers** by ensuring **consumers** have access to up-to-date detailed information about an **authorised fund** particularly before buying **units** and thereafter an appropriate level of investor involvement exists by providing a framework for them to:

(1) participate in the decisions on key issues concerning the **authorised fund**; and

(2) be sent regular and relevant information about the **authorised fund**.
4.2 Pre-sale notifications

Application

4.2.1 This section applies to an authorised fund manager, an ICVC and any other director of an ICVC

Publishing the prospectus

4.2.2 (1) A prospectus must be drawn up in English and published as a document by the authorised fund manager and, for an ICVC, it must be approved by the directors.

(2) The authorised fund manager must ensure that the prospectus:

(a) contains the information required by COLL 4.2.5 R (Table: contents of the prospectus);

(aa) for a non-UCITS retail scheme managed by a full-scope UK AIFM, contains the information required by:

(i) FUND 3.2.2R and FUND 3.2.3R (Prior disclosure of information to investors); and

(ii) FUND 3.2.5R and FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the scheme’s most recent annual report or half-yearly report;

(b) does not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units;

(c) does not contain any provision that conflicts with any applicable rule; and

(d) is kept up-to-date and that revisions are made to it, whenever appropriate.

Provision and filing of the prospectus

4.2.3 (1) The authorised fund manager of an AUT, ACS or an ICVC must:

(a) provide a copy of the scheme’s most recent prospectus drawn up and published in accordance with COLL 4.2.2 R (Publishing the prospectus) free of charge to any person on request; and

(b) file a copy of the scheme’s original prospectus, together with all revisions thereto, with the FCA.

(1A) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus may be
provided in a durable medium or by means of a website that meets the website conditions.

(2) [deleted]

(3) An authorised fund manager must, upon the request of a unitholder in a UCITS scheme that it manages, provide information supplementary to the prospectus of that scheme relating to:

(a) the quantitative limits applying to the risk management of that scheme;
(b) the methods used in relation to (a); and
(c) any recent development of the risk and yields of the main categories of investment.

[Note: articles 74, 75(1) and 75(2) of the UCITS Directive]

Provision and filing of the prospectus of a master UCITS

4.2.3A

(1) The authorised fund manager of a UCITS scheme that is a feeder UCITS must:

(a) where requested by an investor, provide a copy of the prospectus of its master UCITS free of charge; and
(b) file a copy of the prospectus of its master UCITS and any amendments thereto with the FCA.

(2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus of the master UCITS may be provided in a durable medium other than paper or by means of a website that meets the website conditions.

[Note: articles 63(3), 63(5), 75(1) and 75(2) of the UCITS Directive]

Feeder NURS: provision of the prospectus of the qualifying master scheme

4.2.3B

(1) The authorised fund manager of a feeder NURS must, where requested by an investor or the FCA, provide such person with a copy of the prospectus of its qualifying master scheme free of charge.

(2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus of the qualifying master scheme may be provided in a durable medium other than paper, or by means of a website that meets the website conditions.

False or misleading prospectus

4.2.4

(1) The authorised fund manager:

(a) must ensure that the prospectus of the authorised fund does not contain any untrue or misleading statement or omit any matter required by the rules in this sourcebook to be included in it; and
(b) is liable to pay compensation to any person who has acquired any units in the authorised fund and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this rule.

(2) The authorised fund manager is not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if, at the time when the prospectus was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:

(a) it continued to take such reasonable care until the time of the relevant acquisition of units in the scheme; or
(b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or
(c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
(d) the person who acquired the units was not materially influenced or affected by that statement or omission in making the decision to invest.

(3) The authorised fund manager is also not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if:

(a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question; or
(b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the units were acquired.

(4) The authorised fund manager is not liable to pay compensation under (1)(b) if the person who acquired the units knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.

(5) For the purposes of this rule a revised prospectus will be treated as a different prospectus from the original one.

(6) References in this rule to the acquisition of units include references to contracting to acquire them.

Table: contents of the prospectus

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<tr>
<th>Document status</th>
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<tr>
<td>1</td>
<td>A statement that the document is the prospectus of the authorised fund valid as at a particular date (which shall be the date of the document).</td>
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<td>2</td>
<td>A description of the authorised fund including:</td>
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<td>(a) its name;</td>
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<td>(aa) its FCA product reference number (PRN);</td>
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### Umbrella ICVCs or co-ownership schemes

2A The following statements for an ICVC or a co-ownership scheme which is an umbrella:

(a) for an ICVC, a statement that its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;

(aa) for a co-ownership scheme, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liability.
ies of, or meet any claims against, any person other than the participants in that sub-fund; and

(b) for an ICVC or a co-ownership scheme, a statement that while the provisions of the OEIC Regulations, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the Act in the case of co-ownership schemes, provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations or, as the case may be, section 261P of the Act.

**Umbrella Schemes**

2B For a UCITS scheme or non-UCITS retail scheme which is an umbrella:

(a) a statement detailing whether each specific sub-fund is a feeder UCITS, a feeder NURS, a fund of alternative investment funds or a property authorised investment fund, as appropriate; and

(b) the FCA product reference number (PRN) of each sub-fund.

**Investment objectives and policy**

3 The following particulars of the investment objectives and policy of the authorised fund:

(a) the investment objectives, including its financial objectives;

(b) the authorised fund’s investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;

(c) an indication of any limitations on that investment policy;

(c-b) where:

(i) a target for a scheme’s performance has been set, or a payment out of scheme property is permitted, by reference to a comparison of one or more aspects of the scheme property or price with fluctuations in the value or price of an index or indices or any other similar factor (a “target benchmark”); or

(ii) without being a target benchmark, arrangements are in place in relation to the scheme according to which the composition of the portfolio of the scheme 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 “constraining benchmark”); or

(iii) without being a target benchmark or a constraining benchmark, the scheme’s performance is compared against the value or price of an index or indices or any other similar factor (a “comparator benchmark”),

a statement providing sufficient information for investors to understand the choice and use of any target
**benchmark, constraining benchmark or comparator benchmark** in relation to the scheme;

(c-a) where no target benchmark, constraining benchmark or comparator benchmark is used, a statement to that effect and an explanation of how investors can assess the performance of the scheme;

(ca) for an authorised fund that has indicated in its name, investment objectives or fund literature (including in any financial promotions for the fund), through use of descriptions such as 'absolute return', 'total return' or similar, an intention to deliver positive returns in all market conditions (and where there is no actual guarantee of such returns), additional statements in the authorised fund's investment objectives specifying:

(i) that capital is in fact at risk;

(ii) the investment period over which the authorised fund aims to achieve a positive return; and

(iii) there is no guarantee that this will be achieved over that specific, or any, time period;

(d) the description of assets which the capital property may consist of;

(e) the proportion of the capital property which may consist of an asset of any description;

(f) the description of transactions which may be effected on behalf of the authorised fund and an indication of any techniques and instruments or borrowing powers which may be used in the management of the authorised fund;

(g) a list of the eligible markets through which the authorised fund may invest or deal in accordance with COLL 5.2.10 R (2) (Eligible markets: requirements);

(h) for an ICVC, a statement as to whether it is intended that the scheme will have an interest in any immovable property or movable property ((in accordance with COLL 5.6.4 R (2) (Investment powers: general) or COLL 5.2.8 R (2) (UCITS schemes: general)) for the direct pursuit of the ICVC’s business;

(i) where COLL 5.2.12 R (3) (Spread: government and public securities) applies:

(i) a prominent statement as to the fact that more than 35% in value of the scheme property is or may be invested in transferable securities or approved money-market instruments issued or guaranteed by a single state, local authority or public international body; and

(ii) the names of the individual states, local authorities or public international bodies issuing or guaranteeing the securities in which more than 35% in value of the scheme property may be invested;

(k) for an authorised fund which may invest in other schemes, the extent to which the scheme property may be invested in the units of schemes which are managed by the authorised fund manager or by its associate;
(ka) where a scheme is a feeder scheme (other than a feeder UCITS or a feeder NURS), which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, details of the master scheme and the minimum (and, if relevant, maximum) investment that the feeder scheme may make in it;

(l) where a scheme invests principally in scheme units, deposits or derivatives, or replicates an index in accordance with COLL 5.2.31 R or COLL 5.6.23 R (Schemes replicating an index), a prominent statement regarding this investment policy;

(m) where derivatives transactions may be used in a scheme, a prominent statement as to whether these transactions are for the purposes of efficient portfolio management (including hedging) or meeting the investment objectives or both and the possible outcome of the use of derivatives on the risk profile of the scheme;

(n) information concerning the profile of the typical investor for whom the scheme is designed;

(o) information concerning the historical performance of the scheme, comparing in particular its historical performance against each target benchmark and each constraining benchmark used in relation to the scheme, presented in accordance with COBS 4.6.2R (the rules on past performance);

(p) for a non-UCITS retail scheme which invests in immovables, a statement of the countries or territories of situ- ation of land or buildings in which the authorised fund may invest;

(pa) for a fund investing in inherently illiquid assets at least the following (see FUND 3.2.2R(8) (Prior disclosure of information to investors)):

(i) an explanation of the risks associated with the scheme investing in inherently illiquid assets and how those risks might crystallise;

(ii) a description of the tools and arrangements the authorised fund manager would propose using, including those required by FCA rules, to mitigate the risks referred to in (i); and

(iii) an explanation of the circumstances in which those tools and arrangements would typically be deployed and the likely consequences for investors;

(q) for a UCITS scheme which invests a substantial portion of its assets in other schemes, a statement of the maximum level of management fees that may be charged to that UCITS scheme and to the schemes in which it invests;

(qa) where the authorised fund is a qualifying money market fund, a statement identifying it as such a fund and a statement that the authorised fund’s investment objectives and policies will meet the conditions specified in the definition of qualifying money market fund;

(r) where the net asset value of a UCITS scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect;
(s) for a UCITS scheme, a statement that any unitholder may obtain on request the types of information (which must be listed) referred to in COLL 4.2.3R (3) (Availability of prospectus and long report); and
(t) for a UCITS scheme that is or is intended to be a master UCITS, a statement that it is not a feeder UCITS and will not hold units of a feeder UCITS.

Reporting, distributions and accounting dates

4 Relevant details of the reporting, accounting and distribution information which includes:
(a) the accounting and distribution dates;
(b) procedures for:
   (i) determining and applying income (including how any distributable income is paid);
   (ii) unclaimed distributions; and
   (iii) if relevant, calculating, paying and accounting for income equalisation; and
(c) the accounting reference date and when the long report will be published in accordance with COLL 4.5.14 R (Publication and availability of annual and half-yearly long report).
(d) [deleted]

Characteristics of the units

5 Information as to:
(a) where there is more than one class of unit in issue or available for issue, the name of each such class and the rights attached to each class in so far as they vary from the rights attached to other classes;
(b) [deleted]
(c) how unitholders may exercise their voting rights and what these amount to;
(d) where a mandatory redemption, cancellation or conversion of units from one class to another may be required, in what circumstances it may be required; and
(e) for an AUT, the fact that the nature of the right represented by units is that of a beneficial interest under a trust.

5A ACSs: UCITS and NURS eligible investors
(a) A statement that units may not be issued to a person other than a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme.
(b) A statement that the authorised contractual scheme manager must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in paragraph 5A(a).

5B ACSs: UCITS and NURS transfer of units
(a) A statement whether the transfer of units in the ACS scheme is either:
   (i) prohibited; or
   (ii) allowed;

   by the instrument constituting the fund and prospectus.

(b) Where transfer of units is allowed by the instrument constituting the fund and prospectus in accordance with (a)(ii), a statement that units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme.

(c) For a co-ownership scheme which is an umbrella, a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.

Authorised fund manager

6 The following particulars of the authorised fund manager:

   (a) its name;
   (b) the nature of its corporate form;
   (c) the date of its incorporation;
   (d) the address of its registered office;
   (e) the address of its head office, if that is different from the address of its registered office;
   (f) [deleted]
   (g) if the duration of its corporate status is limited, when that status will or may cease; and
   (h) the amount of its issued share capital and how much of it is paid up.

Directors of an ICVC, other than the ACD

7 Other than for the ACD:

   (a) the names and positions in the ICVC of any other directors (if any); and
   (b) the manner, amount and calculation of the remuneration of such directors.

Depositary

8 The following information and particulars concerning the depositary:

   (a) its name;
   (b) the nature of its corporate form;
   (c) the address of its registered office;
   (d) the address of its head office, if that is different from the address of its registered office;
   (e) [deleted]
(f) a description of its duties and conflicts of interest that may arise between the depositary and:
   (i) the scheme; or
   (ii) the unitholders in the scheme; or
   (iii) the authorised fund manager;

(g) (i) a description of any safekeeping functions delegated by the depositary;
   (ii) a description of any conflicts of interest that may arise from such delegation; and
   (iii) for a UCITS scheme, a list showing the identity of each delegate and sub-delegate; and

(h) for a UCITS scheme, a statement that up-to-date information regarding the points covered under (a),(f) and (g), above, will be made available to unitholders on request.

Investment adviser
9 If an investment adviser is retained in connection with the business of an authorised fund:
   (a) its name; and
   (b) where it carries on a significant activity other than providing services to the authorised fund as an investment adviser, what that significant activity is.

Auditor
10 The name of the auditor of the authorised fund.

Contracts and other relationships with parties
11 The following relevant details:
   (a) for an ICVC:
      (i) a summary of the material provisions of the contract between the ICVC and the ACD which may be relevant to unitholders including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
      (ii) the main business activities of each of the directors (other than those connected with the business of the ICVC) where these are of significance to the ICVC’s business;
      (iii) if any director is a body corporate in a group of which any other corporate director of the ICVC is a member, a statement of that fact;
      (iv) the main terms of each contract of service between the ICVC and a director in summary form; and
      (v) for an ICVC that does not hold annual general meetings, a statement that copies of contracts of service between the ICVC and its directors, including the ACD, will be provided to a unitholder on request;
   (b) the names of the directors of the authorised fund manager and the main business activities of each of the directors (other than those connected with the business of
the authorised fund) where these are of significance to the authorised fund’s business;

(c) a summary of the material provisions of the contract between the ICVC or the manager of the AUT and the depositary which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;

(ca) in the case of an ACS, a summary of the material provisions of the contracts between:

(i) the authorised fund manager and the nominated partner (if any); and

(ii) the authorised fund manager and depositary;

which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;

(d) if an investment adviser retained in connection with the business of the authorised fund is a body corporate in a group of which any director of the ICVC or the authorised fund manager of the AUT or ACS is a member, that fact;

(e) a summary of the material provisions of any contract between the authorised fund manager or the ICVC and any investment adviser which may be relevant to unitholders;

(f) if an investment adviser retained in connection with the business of the authorised fund has the authority of the authorised fund manager or the ICVC to make decisions on behalf of the authorised fund manager or the ICVC, that fact and a description of the matters in relation to which it has that authority;

(g) a list of:

(i) the functions which the authorised fund manager has delegated in accordance with FCA rules; and

(ii) the person to whom such functions have been delegated; and

(h) in what capacity (if any), the authorised fund manager acts in relation to any other regulated collective investment schemes and the name of such schemes.

Register of Unitholders

12 Details of:

(a) the address in the United Kingdom where the register of unitholders, and where relevant the plan register is kept and can be inspected by unitholders; and

(b) the registrar’s name and address.

Payments out of scheme property

13 In relation to each type of payment from the scheme property, details of:

(a) who the payment is made to;

(b) what the payment is for;

(c) the rate or amount where available;

(d) how it will be calculated and accrued;

(e) when it will be paid; and

(f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.
Allocation of payments
14 If, in accordance with COLL 6.7.10 R (Allocation of payments to income or capital), the authorised fund manager and the depositary have agreed that all or part of any income expense payments may be treated as a capital expense:
(a) that fact;
(b) the policy for allocation of these payments; and
(c) a statement that this policy may result in capital erosion or constrain capital growth.

Moveable and immovable property (ICVC only)
15 An estimate of any expenses likely to be incurred by the ICVC in respect of movable and immovable property in which the ICVC has an interest.

Valuation and pricing of scheme property
16 In relation to the valuation of scheme property and pricing of units:
(a) either:
   (i) in the case of a single-priced authorised fund, a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point; or
   (ii) in the case of a dual-priced authorised fund, the authorised fund manager’s policy for determining prices for the sale and redemption of units by reference to a particular valuation point and an explanation of how those prices may differ;
(b) details of:
   (i) how the value of the scheme property is to be determined in relation to each purpose for which the scheme property must be valued;
   (ii) how frequently and at what time or times of the day the scheme property will be regularly valued for dealing purposes and a description of any circumstance in which the scheme property may be specially valued;
   (iii) where relevant, how the price of units of each class will be determined for dealing purposes;
   (iv) where and at what frequency the most recent prices will be published; and
   (v) where relevant in the case of a dual-priced authorised fund, an explanation of what is meant by large deals and the authorised fund manager’s policy in relation to large deals; and
(c) if provisions in (a) and (b) do not take effect when the instrument constituting the fund or (where appropriate) supplemental trust deed takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

Dealing
17 The following particulars:
(a) the procedures, the dealing periods and the circumstances in which the authorised fund manager will effect:

(i) the sale and redemption of units and the settlement of transactions (including the minimum number or value of units which one person may hold or which may be subject to any transaction of sale or redemption) for each class of unit in the authorised fund; and

(ii) any direct issue or cancellation of units by an ICVC or by the depositary of an AUT or ACS (as appropriate) through the authorised fund manager in accordance with COLL 6.2.7R (Issue and cancellation of units through an authorised fund manager);

(b) the circumstances in which the redemption of units may be suspended;

(c) whether certificates will be issued in respect of registered units;

(d) the circumstances in which the authorised fund manager may arrange for, and the procedure for the issue or cancellation of units in specie;

(e) the investment exchanges (if any) on which units in the scheme are listed or dealt;

(f) the circumstances and conditions for issuing units in an authorised fund which limit the issue of any class of units in accordance with COLL 6.2.18 R (Limited issue);

(g) the circumstances and procedures for the limitation or deferral of redemptions in accordance with COLL 6.2.19 R (Limited redemption) or COLL 6.2.21 R (Deferred redemption);

(h) in a prospectus available during the period of any initial offer:

(i) the length of the initial offer period;

(ii) the initial price of a unit, which must be in the base currency;

(iii) the arrangements for issuing units during the initial offer, including the authorised fund manager’s intentions on investing the subscriptions received during the initial offer;

(iv) the circumstances when the initial offer will end;

(v) whether units will be sold or issued in any other currency; and

(vi) any other relevant details of the initial offer;

(i) whether a unitholder may effect transfer of title to units on the authority of an electronic communication and if so the conditions that must be satisfied in order to effect a transfer; and

(j) if the authorised fund manager deals as principal in units of the scheme and holds them for that purpose, a statement of its policy for doing so and, where applicable:

(i) a description of when the authorised fund manager may retain any profits it earns and absorb any losses it incurs for these activities; and
Dilution
18 In the case of a single-priced authorised fund, details of what is meant by dilution including:

(a) a statement explaining:

(i) that it is not possible to predict accurately whether dilution is likely to occur; and

(ii) which of the policies the authorised fund manager is adopting under COLL 6.3.8 (1) (Dilution) together with an explanation of how this policy may affect the future growth of the authorised fund; and

(b) if the authorised fund manager may require a dilution levy or make a dilution adjustment, a statement of:

(i) the authorised fund manager's policy in deciding when to require a dilution levy, including what is meant by large deals and the authorised fund manager's policy on large deals, or when to make a dilution adjustment;

(ii) the estimated rate or amount of any dilution levy or dilution adjustment based either on historical data or future projections; and

(iii) the likelihood that the authorised fund manager may require a dilution levy or make a dilution adjustment and the basis (historical or projected) on which the statement is made.

SDRT provision
19 [deleted]

Forward pricing
20 An explanation of forward pricing under COLL 6.3.9 (Forward pricing).

Preliminary charge
21 Where relevant, a statement authorising the authorised fund manager to make a preliminary charge and specifying the basis for and current amount or rate of that charge.

Redemption charge
22 Where relevant, a statement authorising the authorised fund manager to deduct a redemption charge out of the proceeds of redemption; and if the authorised fund manager makes a redemption charge:

(a) the current amount of that charge or if it is variable, the rate or method of calculating it;

(b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the authorised fund manager on request; and

(c) how the order in which units acquired at different times by a unitholder is to be determined so far as necessary for the purposes of the imposition of the redemption charge.

Property Authorised Investment Funds
22A For a property authorised investment fund, a statement that:
(1) [deleted]
(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units if the authorised fund manager reasonably considers such action to be:
   (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
   (b) in the interests of the unitholders as a whole.

General information
23 Details of:
   (a) the address at which copies of the instrument constituting the fund, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
   (b) the manner in which any notice or document will be served on unitholders;
   (c) the extent to which and the circumstances in which:
      (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the scheme property or on the income derived from the scheme property; and
      (ii) deductions by way of withholding tax may be made from distributions of income to unitholders and payments made to unitholders on the redemption of units;
   (d) for a UCITS scheme, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a unitholder and those to be paid out of scheme property; and
   (e) for an ICVC, whether or not annual general meetings will be held.

Information on the umbrella
24 In the case of a scheme which is an umbrella with two or more sub-funds, the following information:
   (a) that a unitholder is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);
   (b) that an exchange of units in one sub-fund for units in any other sub-fund is treated as a redemption and sale and will, for persons subject to United Kingdom taxation, be a realisation for the purposes of capital gains taxation;
   (c) that in no circumstances will a unitholder who exchanges units in one sub-fund for units in any other sub-fund be given a right by law to withdraw from or cancel the transaction;
(d) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;

(e) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund; and

(f) for each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the scheme which is an umbrella.

(g) [deleted]

Application of the prospectus contents to an umbrella

25 For a scheme which is an umbrella, information required must be stated:

(a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and

(b) for the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.

Information on a feeder UCITS

25A In the case of a feeder UCITS, the following information:

(a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests at least 85% in value of the scheme property in units of that master UCITS;

(b) the investment objective and policy, including the risk profile; and whether the performance records of the feeder UCITS and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of how the balance of the scheme property which is not invested in units of the master UCITS is invested in accordance with COLL 5.8.3 R (Balance of scheme property: investment restrictions on a feeder UCITS);

(c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

(d) a summary of the master-feeder agreement or where applicable, the internal conduct of business rules referred to in COLL 11.3.2 R (2) (Master-feeder agreement and internal conduct of business rules);

(e) how the unitholders may obtain further information on the master UCITS and the master-feeder agreement;

(f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as the aggregate charges of the feeder UCITS and the master UCITS; and

(g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

[Note: article 63(1) of the UCITS Directive]

Information on a feeder NURS

25B In the case of a feeder NURS, the following information:
(a) a declaration that the feeder NURS is a feeder of a particular qualifying master scheme and as such is dedicated to units in a single qualifying master scheme and the minimum (and, if relevant, maximum) investment that the feeder NURS may make in its qualifying master scheme;

(b) the investment objective and policy of the feeder NURS, including its risk profile; and whether the performance records of the feeder NURS and the qualifying master scheme are identical, or to what extent and for which reasons they differ, including a description of how the balance of the scheme property which is not invested in units of the qualifying master scheme is invested in accordance with COLL 5.6.7 R (6A) (Spread: general);

(c) a brief description of the qualifying master scheme, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the qualifying master scheme may be obtained;

(d) how the unitholders may obtain further information on the qualifying master scheme;

(e) a description of all remuneration or reimbursement of costs payable by the feeder NURS by virtue of its investment in units of the qualifying master scheme, as well as the aggregate charges of the feeder NURS and the qualifying master scheme; and

(f) a description of the tax implications of the investment into the qualifying master scheme for the feeder NURS.

Marketing in another EEA state

26 [deleted]

Investment in overseas property through an intermediate holding vehicle

26A If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement disclosing the existence of that intermediate holding vehicle or series of intermediate holding vehicles and confirming that the purpose of that intermediate holding vehicle or series of intermediate holding vehicle is to enable the holding of overseas immovables by the scheme.

Additional information

27 Any other material information which is within the knowledge of the directors of an ICVC or the authorised fund manager of an AUT or ACS, or which the directors or authorised fund manager would have obtained by making reasonable enquiries, including but not confined to, the following matters:

(a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by so participating;

(b) a clear and easily understandable explanation of any risks which investment in the authorised fund may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
(c) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the authorised fund or any investment objective of giving protection to the capital value of, or income return from, such a holding:

(i) details of that arrangement or protection;

(ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;

(iii) a description of the risks that could affect achievement of that return or protection; and

(iv) details of the arrangements by which the authorised fund manager will notify unitholders of any action required by the unitholders to obtain the benefit of the guarantee; and

(d) whether any notice has been given to unitholders of the authorised fund manager intention to propose a change to the scheme and if so, its particulars.

Remuneration Policy

28 For a UCITS scheme and in relation to UCITS Remuneration Code staff:

(a) up-to-date details of the remuneration policy including, but not limited to:

(i) a description of how remuneration and benefits are calculated; and

(ii) the identities of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; or

(b) a summary of the remuneration policy and a statement that:
Section 4.2 : Pre-sale notifications

Information to be provided on securities financing transactions and total return swaps

4.2.5A

(1) The Securities Financing Transactions Regulation sets out the additional information which:

(a) an authorised fund manager of a UCITS scheme must include in the UCITS scheme prospectus; and

(b) an authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme must make available to investors before they invest.

(2) COLL 4.2.5BEU and COLL 4.2.5CEU copy out the relevant provisions of that regulation.

(3) An authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme should publish the information in the scheme’s prospectus.

(4) An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme that does not use securities financing transactions or total return swaps is not required to include the information in COLL 4.2.5CEU in the prospectus or other pre-sale documents.

[Note: A transitional provision applies to COLL 4.2.5AG: see COLL TP 1.38G]

4.2.5B

Transparency of collective investment undertakings in pre-contractual documents

1. The prospectus referred to in [COLL 4.2.2R], and the disclosure by AIFMs to investors required by [FUND 3.2.2R] shall specify the SFT and total return swaps which UCITS management companies or UCITS investment companies, and AIFMs respectively, are authorised to use and include a clear statement that those transactions and instruments are used.

2. The prospectus and the disclosure to investors referred to in paragraph 1 shall include the data provided for in Section B of the Annex.

[Note: article 14(1) and (2) of the Securities Financing Transactions Regulation and article 3 for relevant definitions]

4.2.5C

Information to be included in the UCITS Prospectus and AIF disclosure to investors:

- General description of the SFTs and total return swaps used by the collective investment undertaking and the rationale for their use.
Information to be included in the UCITS Prospectus and AIF disclosure to investors:

<table>
<thead>
<tr>
<th>Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall data to be reported for each type of SFTs and total return swaps</td>
<td>Types of assets that can be subject to them.</td>
</tr>
<tr>
<td></td>
<td>Maximum proportion of AUM that can be subject to them.</td>
</tr>
<tr>
<td></td>
<td>Expected proportion of AUM that will be subject to each of them.</td>
</tr>
<tr>
<td>Criteria used to select counterparties (including legal status, country of origin, minimum credit rating).</td>
<td>Acceptable collateral: description of acceptable collateral with regard to asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.</td>
</tr>
<tr>
<td>Collateral valuation: description of the collateral valuation methodology used and its rationale, and whether daily mark-to-market and daily variation margins are used.</td>
<td>Risk management: description of the risks linked to SFTs and total return swaps as well as risks linked to collateral management, such as operational, liquidity, counterparty, custody and legal risks and, where applicable, the risks arising from its reuse.</td>
</tr>
<tr>
<td>Specification of how assets subject to SFTs and total return swaps and collateral received are safe-kept (e.g. with fund custodian).</td>
<td>Specification of any restrictions (regulatory or self-imposed) on reuse of collateral.</td>
</tr>
<tr>
<td>Policy on sharing of return generated by SFTs and total return swaps: description of the proportions of the revenue generated by SFTs and total return swaps that is returned to the collective investment undertaking, and of the costs and fees assigned to the manager or third parties (e.g. the agent lender). The prospectus or disclosure to investors shall also indicate if these are related parties to the manager.</td>
<td></td>
</tr>
</tbody>
</table>

[Note: section B of the annex to the Securities Financing Transactions Regulation and article 3 for relevant definitions.]

[Note: AUM means assets under management.]

**Guidance on contents of the prospectus**

4.2.6 (1) In relation to COLL 4.2.5R (3)(b) the prospectus might include:

(a) a description of the extent (if any) to which that policy does not envisage the authorised fund remaining fully invested at all times;

(b) for a non-UCITS retail scheme which may invest in immovable property:

(i) the maximum extent to which the scheme property may be invested in immovables; and

(ii) a statement of the policy of the authorised fund manager in relation to insurance of immovables forming part of the scheme property; and

(c) a description of any restrictions in the assets in which investment may be made, including restrictions in the extent to which the authorised fund may invest in any category of asset, indicating (if appropriate) where the restrictions are more onerous than those imposed by COLL 5 (Investment and borrowing powers).
(1A) In relation to \textsection{} 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.

(2) In relation to \textsection{} COLL 4.2.5R (13), the type of payments are likely to include management fees (such as periodic and performance fees), depositary fees, custodian fees, transaction fees, registrar fees, audit fees and FCA fees. Expenses which represent properly incurred costs of the scheme may also be treated as a type of payment for this purpose.

(3) [deleted]

(4) In relation to \textsection{} COLL 4.2.5 R (16)(a), where the prospectus includes provisions for both a single-priced authorised fund and a dual-priced authorised fund, it should state prominently which method of pricing is applicable to which authorised fund, and explain how the differences between them may affect unitholders (for example if a unitholder exchanges units in a single-priced authorised fund for units in a dual-priced authorised fund, or vice versa).

(4A) In relation to \textsection{} COLL 4.2.5R(3)(pa)(ii) and (iii), the types of liquidity management tools and arrangements that should typically be described include:

(a) suspension of dealing under \textsection{} COLL 7.2.-3R, \textsection{} COLL 7.2.-2R, \textsection{} COLL 7.2.-1R and \textsection{} COLL 7.2.1R;

(b) fair value price adjustment (see \textsection{} COLL 6.3.3ER, and \textsection{} COLL 6.3.6G(1)(5) to \textsection{} COLL 6.3.6G(1)(7));

(c) fair and reasonable valuation of an immovable (see \textsection{} COLL 6.3.6G(1)(7A) and \textsection{} COLL 6.3.6G(1)(7B)); and

(d) measures to prevent dilution, such as applying a dilution levy (see \textsection{} COLL 6.3.8R).

(5) Additional matters which are not contained in \textsection{} COLL 4.2.5 R may be required to be included in the prospectus, for example for the purposes of making the scheme eligible under relevant tax legislation.

(6) The authorised fund manager of a UCITS scheme should consider the appropriateness of including additional matters in its prospectus as a result of the ESMA Guidelines on ETFs and other UCITS issues (ESMA 2012/832).

(7) (a) A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should ensure that the prospectus of the scheme includes the information required under \textsection{} FUND 3.2 (Investor information) and \textsection{} COLL 4.2.5R.

(b) The authorised fund manager need not state the same information twice to satisfy both sets of requirements.
4.3 Approvals and notifications

Application

4.3.1 This section applies to an authorised fund manager.

Explanation

4.3.2 (1) The diagram in [COLL 4.3.3 G explains how an authorised fund manager should treat changes it is proposing to a scheme and provides an overview of the rules and guidance in this section.

(2) Regulation 21 of the OEIC Regulations (The Authority’s approval for certain changes in respect of a company), section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary) and section 251 of the Act (Alteration of schemes and changes of manager or trustee) require the prior approval of the FCA for certain proposed changes to an authorised fund, including a change of the authorised fund manager or depositary or a change to the instrument constituting the fund. This should be kept in mind when considering any proposed change.

Diagram: Change event

4.3.3 This diagram belongs to [COLL 4.3.2 G.

Fundamental change requiring prior approval by meeting

4.3.4 (1) The authorised fund manager, must, by way of an extraordinary resolution, obtain prior approval from the unitholders for any
proposed change to the scheme which, in accordance with (2), is a fundamental change.

(2) A fundamental change is a change or event which:
(a) changes the purposes or nature of the scheme; or
(b) may materially prejudice a unitholder; or
(c) alters the risk profile of the scheme; or
(d) introduces any new type of payment out of scheme property.

Guidance on fundamental changes

(1) Any change may be fundamental depending on its degree of materiality and effect on the scheme and its unitholders. Consequently an authorised fund manager will need to determine whether in each case a particular change is fundamental in nature or not.

(2) For the purpose of COLL 4.3.4R (2)(a) to COLL 4.3.4R (2)(c) a fundamental change to a scheme is likely to include:
(a) any proposal for a scheme of arrangement referred to in COLL 7.6.2 R (Schemes of arrangement: requirements);
(b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
(c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity investments;
(d) a change in the investment policy to allow the authorised fund to invest in derivatives as an investment strategy which increases its volatility;
(e) a change to the characteristics of a scheme to distribute income annually rather than monthly; or
(f) the introduction of limited redemption arrangements.

Significant change requiring pre-event notification

(1) The authorised fund manager must give prior written notice to unitholders, in respect of any proposed change to the operation of a scheme that, in accordance with (2), constitutes a significant change.

(2) A significant change is a change or event which is not fundamental in accordance with COLL 4.3.4R but which:
(a) affects a unitholder’s ability to exercise his rights in relation to his investment; or
(b) would reasonably be expected to cause the unitholder to reconsider his participation in the scheme; or
(c) results in any increased payments out of the scheme property to an authorised fund manager or any other director of an ICVC or an associate of either; or
(d) materially increases other types of payment out of scheme property.
(3) The notice period in (1) must be of a reasonable length (and must not be less than 60 days).

Guidance on significant changes

(1) Changes may be significant depending in each case on their degree of materiality and effect on the scheme and its unitholders. Consequently the authorised fund manager will need to determine whether in each case a particular change is significant in nature or not.

(2) For the purpose of COLL 4.3.6 R a significant change is likely to include:
   (a) a change in the method of price publication;
   (b) a change in any operational policy such as dilution policy or allocation of payments policy;
   (c) an increase in the preliminary charge where units are purchased through a group savings plan; or
   (d) a change in the pricing arrangements for units of the scheme so as to cause a single-priced authorised fund to become a dual-priced authorised fund, or vice versa.

(3) Where the directors of an ICVC elect to discontinue holding annual general meetings under paragraph 37A of the OEIC Regulations, they are required to give 60 days' written notice to shareholders. For the purpose of COLL 4.3.6 R this should be treated as a significant change to the operation of the scheme.

Notifiable changes

(1) The authorised fund manager must inform unitholders in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the scheme.

(2) A notifiable change is a change or event, other than a fundamental change under COLL 4.3.4 R or a significant change under COLL 4.3.6 R, which a unitholder must be made aware of unless the authorised fund manager concludes that the change is insignificant.
(a) a change of named investment manager where the authorised fund has been marketed on the basis of that individual's involvement;

(b) a significant political event which impacts on the authorised fund or its operation;

(c) a change to the time of the valuation point;

(d) the introduction of limited issue arrangements; or

(e) a change of the depositary or a change in the name of the authorised fund.

(3) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently the authorised fund manager will need to assess each change or event individually.

(4) An appropriate manner of notification could include:

(a) sending an immediate notification to the unitholder;

(b) publishing the information on a website; or

(c) the information being included in the next long report of the scheme.

Appointment of an AFM without prior written notice to Unitholders

4.3.10

(1) [deleted]

(2) The new authorised fund manager must immediately notify unitholders of its appointment under (1) in an appropriate manner.

Change events relating to feeder UCITS and feeder NURS

4.3.11

Where the authorised fund manager of either a feeder UCITS or a feeder NURS is notified of any change in respect of its master UCITS or qualifying master scheme which has the effect of a change to the feeder UCITS or feeder NURS, the authorised fund manager must:

(1) classify it as a fundamental change, significant change or a notifiable change to the feeder UCITS or feeder NURS in accordance with the rules in this section; and

(2) (a) for a fundamental change, obtain approval from the unitholders by way of an extraordinary resolution; or

(b) for a significant change, give written notice to unitholders of that change; or

(c) for a notifiable change, comply with COLL 4.3.8 R (Notifiable changes).

4.3.12

The actions required by COLL 4.3.11 R (2)(a) and (b) must be carried out as soon as reasonably practicable after the authorised fund manager of the feeder UCITS or feeder NURS has been informed of the relevant change to the master UCITS or qualifying master scheme.
4.3.13

(1) The authorised fund manager of the feeder UCITS or feeder NURS should assess the change to the master UCITS or qualifying master scheme in terms of its impact on the feeder UCITS or feeder NURS. For example, a change to the investment objective and policy of the master UCITS or qualifying master scheme that alters its risk profile would constitute a fundamental change for the feeder UCITS or feeder NURS. In order for the feeder UCITS or feeder NURS to continue investing in the master UCITS or qualifying master scheme, the authorised fund manager of the feeder UCITS or feeder NURS should obtain the approval of unitholders by way of an extraordinary resolution, or else make a proposal to invest in a different master UCITS or qualifying master scheme. For a feeder UCITS this should be done in accordance with COLL 11.2.2 R (Application for approval of an investment in a master UCITS).

(2) Not all changes affecting the master UCITS or qualifying master scheme will have the same significance for the feeder UCITS or feeder NURS and its unitholders. For example, a change to how the prices of the units in the master UCITS or qualifying master scheme are published might not be a significant change for the feeder UCITS or
feeder NURS if the prices of its own units continue to be published in the same way.

(3) Where the authorised fund manager of the feeder UCITS or feeder NURS receives insufficient notice of the intended change to the master UCITS or qualifying master scheme to be able to seek the prior approval of unitholders to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the feeder UCITS or feeder NURS.
4.4 Meetings of Unitholders and service of notices

Application

4.4.1 This section applies to an authorised fund manager, a depositary and any other director of an ICVC.

General meetings

4.4.2 (1) The authorised fund manager, the depositary or the other directors of an ICVC may convene a general meeting of unitholders at any time.

(2) The unitholders may request the convening of a general meeting by a requisition which must:

(a) state the objects of the meeting;
(b) be dated;
(c) be signed by unitholders who, at that date, are registered as the unitholders of units representing not less than one-tenth in value (or such lower proportion stated in the instrument constituting the fund) of all of the units then in issue; and
(d) be deposited at the head office of the ICVC or with the depositary of an AUT or ACS.

(3) The authorised fund manager, the depositary or the other directors of an ICVC must on receipt of a requisition that complies with (2), immediately convene a general meeting of the authorised fund for a date no later than eight weeks after receipt of the requisition.

(4) The advisory committee of a charity authorised investment fund may also request the convening of a general meeting of unitholders by giving notice in accordance with COLL 14.3.5R.

Class meetings

4.4.3 This section applies, unless the context otherwise requires, to class meetings by reference to the units of the class concerned and the unitholders and prices of such units.

Special meaning of Unitholder in COLL 4.4

4.4.4 (1) Unless a unit in the authorised fund is a participating security, in this section "unitholders" means unitholders as at a cut-off date selected...
by the *authorised fund manager* which is a reasonable time before notices of the relevant meeting are sent out.

(2) If any unit in the *authorised fund* is a *participating security*, a registered *unitholder* of such a unit is entitled to receive a notice of a meeting or a notice of an adjourned meeting under [COLL 4.4.5 R](#) (Notice of general meetings), if entered on the *register* at the close of business on a day to be determined by the *authorised fund manager*, which must not be more than 21 days before the notices of the meeting are sent out.

(3) For the purposes of (2), in [COLL 4.4.6 R](#) (Quorum) to [COLL 4.4.11 R](#) (Chairman, adjournments and minutes) "unitholders" in relation to those units means the persons entered on the register at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting.

**Notice of general meetings**

4.4.5

(1) Where the *authorised fund manager*, the *depositary* or the other *directors* of an ICVC decide to convene a general meeting of *unitholders*:

(a) each *unitholder* must be given at least 14 days written notice, inclusive of the date on which the notice is first served and the day of the meeting; and

(b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the *depositary*.

(2) The accidental omission to give notice to, or the non-receipt of notice by, any *unitholder* does not invalidate the proceedings at any meeting.

(3) Notice of an adjourned meeting of *unitholders* must be given to each *unitholder*, stating that while two *unitholders* present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with [COLL 4.4.6R (3)](#), should two such *unitholders* not be present after a reasonable time of convening of the meeting.

(4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.

**Quorum**

4.4.6

(1) The quorum required to conduct business at a meeting of *unitholders* is two *unitholders*, present in person or by proxy.

(2) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:

(a) if convened on the requisition of *unitholders*, must be dissolved; and

(b) in any other case, must stand adjourned to:
(i) a day and time which is seven or more days after the day and time of the meeting; and

(ii) a place to be appointed by the chairman.

(3) If, at an adjourned meeting under (2)(b), a quorum is not present after a reasonable time from the time for the meeting, one person entitled to be counted in a quorum present at the meeting shall constitute a quorum.

Resolutions

4.4.7

(1) Except where an extraordinary resolution is specifically required or permitted, any resolution of unitholders is passed by a simple majority of the votes validly cast at a general meeting of unitholders.

(2) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.

(3) Where a resolution (including an extraordinary resolution) is required to conduct business at a meeting of unitholders and every unitholder is prohibited under COLL 4.4.8R (4) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the depositary to the process, instead be passed with the written consent of unitholders representing 50% or more, or for an extraordinary resolution 75% or more, of the units of the scheme in issue.

Voting rights

4.4.8

(1) On a show of hands every unitholder who is present in person has one vote.

(2) On a poll:

(a) votes may be given either personally or by proxy or in another manner permitted by the instrument constituting the fund;

(b) the voting rights for each unit must be the proportion of the voting rights attached to all of the units in issue that the price of the unit bears to the aggregate price or prices of all of the units in issue:

(i) if any unit is a participating security, at the time determined under COLL 4.4.4R (2) (Special meaning of Unitholder in COLL 4.4);

(ii) otherwise at the date specified in COLL 4.4.4R (1); and

(c) a unitholder need not use all his votes or cast all his votes in the same way.

(3) For joint unitholders, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint unitholders. For this purpose seniority must be
determined by the order in which the names stand in the register of unitholders.

(4) No director of the ICVC or the authorised fund manager of an AUT or ACS can be counted in the quorum of, and no such director or the authorised fund manager of an AUT or ACS nor any of their associates may vote at, any meeting of the authorised fund.

(5) The prohibition in (4) does not apply to any units held on behalf of, or jointly with, a person who, if himself the registered unitholder, would be entitled to vote and from whom the director, the authorised fund manager of an AUT or ACS its associate have received voting instructions.

(6) For the purpose of this section, units held, or treated as held, by the authorised fund manager or any other director of the ICVC, must not, except as mentioned in (5), be regarded as being in issue.

**Right to demand a poll**

4.4.9

(1) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

(a) the chairman;

(b) at least two unitholders; or

(c) the depositary.

(2) Unless a poll is demanded in accordance with (1), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

**Proxies**

4.4.10

(1) A unitholder may appoint another person to attend a general meeting and vote in his place.

(2) Unless the instrument constituting the fund provides otherwise, a unitholder may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.

(3) Every notice calling a meeting of a scheme must contain a reasonably prominent statement that a unitholder entitled to attend and vote may appoint a proxy.

(4) For the appointment to be effective, any document relating to the appointment of a proxy must not be required to be received by the ICVC or any other person more than 48 hours before the meeting or adjourned meeting.

**Chairman, adjournment and minutes**

4.4.11

(1) A meeting of unitholders must have a chairman, nominated:

(a) in the case of an AUT or ACS, by the depositary;
(b) in the case of an ICVC, by a director other than the ACD or an associate of the ACD or, if no such nomination is made, by the depositary.

(2) If the chairman is not present after a reasonable time from the time for the meeting, the unitholders present must choose one of them to be chairman.

(3) The chairman:
   (a) may, with the consent of any meeting of unitholders at which a quorum is present; and
   (b) must, if so directed by the meeting;
       adjourn the meeting from time to time and from place to place.

(4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.

(5) The authorised fund manager must ensure that:
   (a) minutes of all resolutions and proceedings at every meeting of unitholders are made and kept; and
   (b) any minute made in (a) is signed by the chairman of the meeting of unitholders.

(6) Any minute referred to in (5)(b) is conclusive evidence of the matters stated in it.

Notices to Unitholders

(1) Where this sourcebook requires any notice or document to be served upon a unitholder, it is duly served:
   (a) for units held by a registered unitholder, if it is:
       (i) sent by post to or left at the unitholder’s address as appearing in the register; or
       (ii) sent by using an electronic medium in accordance with COLL 4.4.13 R (Other notices).
   (b) [deleted]

(2) Any notice or document served by post is deemed to have been served on the second business day following the day on which it is posted.

(3) Any document left at a registered address or delivered other than by post is deemed to have been served on that day.

Other notices

(1) Any document or notice to be served on or information to be given to, any person, including the FCA, must be in legible form.

(2) For the purposes of this rule, any form is legible form which:
(a) is consistent with the ICVC’s, the directors’, the authorised fund manager’s or the depositary’s knowledge of how the recipient of the document wishes or expects to receive the document;

(b) is capable of being provided in hard copy by the authorised fund manager, the depositary or any other director of the ICVC;

(c) enables the recipient to know or record the time of receipt; and

(d) is reasonable in the context.

(3) (a) In this sourcebook, any requirement that a document be signed may be satisfied by an electronic signature or electronic evidence of assent.

(b) In relation to an AUT or ACS, where transfer of title to units is to be effected on the authority of an electronic communication, the authorised fund manager must take reasonable steps to ensure that any electronic communication purporting to be made by the unitholder or his agent is in fact made by that person.

References to writing and electronic documents

In this sourcebook references to writing and the use of electronic media should be construed in accordance with GEN 2.2.14 R (References to writing) and its related guidance provisions.

Service of notice Regulations

The provisions in this section relating to the service and delivery of notices and documents both to unitholders and to the FCA, disapply the provisions of The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) under the power in Regulation 1(6) of those Regulations.
4.5 Reports and accounts

Application

4.5.1 The rules and guidance in this section apply to an authorised fund manager, a depositary and any other director of an ICVC.

Explanation

4.5.2 In order to provide the unitholders with regular and relevant information about the progress of the authorised fund, the authorised fund manager must:

1. prepare a long report half-yearly and annually; and
2. [deleted]
3. make the long report available to unitholders on request.

Full-scope UK AIFM of a non-UCITS retail scheme

4.5.2A (1) A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should comply with both:
   (a) FUND 3.3 (Annual report of an AIF); and
   (b) this chapter,
   regarding the preparation and publication of annual reports.

(2) The authorised fund manager need not state the same information twice to satisfy both sets of requirements.

(3) The authorised fund manager, when preparing the half-yearly long report, needs to comply only with this chapter.

Preparation of long reports

4.5.3 (1) The authorised fund manager must for each annual accounting period and half-yearly accounting period, prepare a long report for a scheme.

(2) [deleted]
(3) Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

(4) [deleted]

ICVC requirements

4.5.4 (G) (1) The OEIC Regulations contain requirements for the preparation of annual and half-yearly reports and make the directors of an ICVC responsible for the preparation of annual and half-yearly reports on the ICVC.

(2) Regulations 66 (Reports: preparation), 67 (Reports: accounts) and 68 (Reports: voluntary revision) of the OEIC Regulations also contain a number of other requirements relating to reports and accounts of an ICVC.

4.5.5 [deleted]

4.5.6 [deleted]

Contents of the annual long report

4.5.7 (R) (1) An annual long report on an authorised fund, other than a scheme which is an umbrella, must contain:

(a) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 4.5.9 R (Authorised fund manager’s report);

(c) comparative information in accordance with COLL 4.5.10 R (Comparative information);

(d) the report of the depositary in accordance with COLL 4.5.11 R (Report of the depositary);

(e) the report of the auditor in accordance with COLL 4.5.12 R (Report of the auditor); and

(f) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R.

(2) An annual long report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund:

(i) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(ii) the report of the authorised fund manager in accordance with COLL 4.5.9 R;

(iii) comparative information in accordance with COLL 4.5.10 R; and
(iv) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R;

(b) [deleted]

(c) the report of the depositary in accordance with COLL 4.5.11 R; and

(d) the report of the auditor in accordance with COLL 4.5.12 R.

(3) The directors of an ICVC or the authorised fund manager of an AUT or ACS must ensure that the accounts referred to in (1)(a), (2)(a) and (4)(a) give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund, or, in the case of (2)(a) and (4)(a), the sub-fund, for the annual accounting period in question and the financial position of the authorised fund or sub-fund as at the end of that period.

(4) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further annual long report for any one or more individual sub-funds of the scheme, in which case it must contain:

(a) in relation to the sub-fund:
   (i) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;
   (ii) the report of the authorised fund manager in accordance with COLL 4.5.9 R; and
   (iii) comparative information in accordance with COLL 4.5.10 R;

(b) the report of the depositary in accordance with COLL 4.5.11 R; and

(c) the report of the auditor in accordance with COLL 4.5.12 R.

(5) An annual long report of a UCITS scheme which is a feeder UCITS must also include:

(a) a statement on the aggregate of the payments out of scheme property as set out in the prospectus (in this rule “charges”) of the feeder UCITS and the master UCITS; and

(b) a description of how the annual long report of its master UCITS can be obtained.

[Note: article 63(2) of the UCITS Directive]

(6) An annual long report of a feeder NURS must also include:

(a) a statement on the aggregate charges of the feeder NURS and its qualifying master scheme; and

(b) a description of how the annual long report (or nearest equivalent document for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme can be obtained.

(7) An annual long report of a UCITS scheme must also include:
(a) (i) the total amount of remuneration paid by the authorised fund manager to its staff for the financial year, split into fixed and variable remuneration;

(ii) the number of beneficiaries; and

(iii) where relevant, any amount paid directly by the UCITS scheme itself, including any performance fee;

(b) the aggregate amount of remuneration broken down by categories of UCITS Remuneration Code staff;

(c) a description of how the remuneration and the benefits have been calculated;

(d) the outcome of the reviews referred to in SYSC 19E.2.7R(1) and SYSC 19E.2.8R, including any irregularities that have occurred; and

(e) details of any material changes to the adopted remuneration policy since the previous annual long report was prepared.

[Note: article 69(3) second paragraph of the UCITS Directive]

(8) An annual long report of an authorised fund must also contain a statement setting out a description of the assessment of value required by COLL 6.6.20R including:

(a) a separate discussion and conclusion for the matters covered in each paragraph of COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;

(b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to unitholders;

(c) an explanation for any case in which unitholders hold units in a class that is subject to higher charges than those applying to other classes of the same scheme with substantially similar rights;

(d) the conclusion of the authorised fund manager’s assessment of whether the charges are justified in the context of the overall value delivered to the unitholders in the scheme; and

(e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the unitholders, a clear explanation of what action has been or will be taken to address the situation.

(9) An AFM need not include the statement required by (8) in its annual long report if it makes the statement available to unitholders annually in a composite report covering two or more of the authorised funds it manages, published in the same manner as the annual long report.

(1) The FCA recognises that the annual long report, including the remuneration related disclosures in COLL 4.5.7R(7), may be required to be made available to unitholders before the completion of the authorised fund manager’s first annual performance period in which it has to comply with the UCITS Remuneration Code.
(2) Under (1), the FCA expects the authorised fund manager to make best efforts to comply with COLL 4.5.7R(7) to the extent possible.

(3) The authorised fund manager, having made best efforts to achieve compliance with COLL 4.5.7R(7), may omit to disclose information relating to remuneration where the information:

(a) is not available to the authorised fund manager for the relevant annual accounting period; or

(b) is available but will not provide materially relevant, reliable, comparable and clear information to unitholders about the remuneration policy of the authorised fund manager, as it affects the particular UCITS scheme.

(4) Where disclosure is omitted, the authorised fund manager should explain the basis for that omission.

An AFM which is not subject to COLL 6.6.20R as a result of COLL 6.6.19R is not required to comply with COLL 4.5.7R(8) or (9).

**Contents of the half-yearly long report**

(1) A half-yearly long report on an authorised fund, other than for a scheme which is an umbrella, must contain:

(a) the accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 4.5.9 R (Authorised fund manager’s report); and

(c) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website in accordance with ESG 2.3.1R, where the half-yearly long report most closely follows the reporting deadline of 30 June, under ESG 2.1.1R(1).

(2) A half-yearly long report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund:

(i) the accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(ii) the report of the authorised fund manager in accordance with COLL 4.5.9 R; and

(iii) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R, where the half-yearly long report most closely follows the reporting deadline of 30 June, under ESG 2.1.1R(1).

(b) [deleted]
(3) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further half-yearly long report for any one or more individual sub-funds of the scheme. Such reports must contain the accounts and the report of the authorised fund manager that would be required by (1) if the sub-fund were a separate authorised fund.

(4) The half-yearly long report of a UCITS scheme which is a feeder UCITS must also include a description of how the half-yearly and annual reports of its master UCITS can be obtained.

[Note: article 63(2) second subparagraph of the UCITS Directive]

(5) The half-yearly long report of a feeder NURS must also include a description of how the half-yearly and annual long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme can be obtained.

Annual and half-yearly long reports for sub-funds of an umbrella

The authorised fund manager may, but need not, prepare annual and half-yearly long reports for any individual sub-fund of an umbrella in accordance with ■ COLL 4.5.7R (4) and ■ COLL 4.5.8R (3) and make them available on request to any unitholder investing in the relevant sub-fund. However, if the authorised fund manager does so, this does not relieve it of its duty:

(1) to prepare annual and half-yearly long reports on the umbrella as a whole (■ COLL 4.5.7R (2) and ■ COLL 4.5.8R (2)); and

(2) to make available and publish the annual and half-yearly long reports for the umbrella as a whole (■ COLL 4.5.14 R).

Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

(1) The Securities Financing Transactions Regulation sets out the additional information which:

(a) an authorised fund manager of a UCITS scheme must include in the scheme’s annual and half-yearly reports; and

(b) an authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme must include in the scheme’s annual report.

(2) ■ COLL 4.5.8ABEU and ■ COLL 4.5.8ACEU copy out the relevant provisions of that regulation.

(3) An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme that has not used securities financing transactions or total return swaps during the relevant annual accounting period or half-yearly accounting period is not required to include the information in ■ COLL 4.5.8ACEU in its reports.
<table>
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<tr>
<th>Transparency of collective investment undertakings in periodical reports</th>
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<td><strong>1.</strong> UCITS management companies, UCITS investment companies, and AIFMs shall inform investors on the use they make of SFTs and total return swaps in the following manner:</td>
</tr>
<tr>
<td>(a) for UCITS management companies or UCITS investment companies in the half-yearly and annual reports referred to in [COLL 4.5.3R (Preparation of long reports)];</td>
</tr>
<tr>
<td>(b) for AIFMs in the annual report referred to in [FUND 3.3.2R (Provision of annual report).]</td>
</tr>
<tr>
<td><strong>2.</strong> The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex.</td>
</tr>
<tr>
<td>[Note: article 13(1) and 13(2) of the Securities Financing Transactions Regulation and article 3 for relevant definitions]</td>
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<th>Information to be provided in the UCITS half-yearly and annual reports and the AIF’s annual report</th>
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<tr>
<td><strong>Global data:</strong></td>
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<td>- The amount of securities and commodities on loan as a proportion of total lendable assets defined as excluding cash and cash equivalents;</td>
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<tr>
<td>- The amount of assets engaged in each type of SFTs and total return swaps expressed as an absolute amount (in the collective investment undertaking’s currency) and as a proportion of the collective investment undertaking’s assets under management (AUM).</td>
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<th>Concentration data:</th>
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<td>- Ten largest collateral issuers across all SFTs and total return swaps (break down of volumes of the collateral securities and commodities received per issuer’s name);</td>
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<td>- Top 10 counterparties of each type of SFTs and total return swaps separately (Name of counterparty and gross volume of outstanding transactions).</td>
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<th>Aggregate transaction data for each type of SFTs and total return swaps separately to be broken down according to the below categories:</th>
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<tr>
<td>- Type and quality of collateral;</td>
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<tr>
<td>- Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open maturity;</td>
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<tr>
<td>- Currency of the collateral;</td>
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<tr>
<td>- Maturity tenor of the SFTs and total return swaps broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open transactions;</td>
</tr>
<tr>
<td>- Country in which the counterparties are established;</td>
</tr>
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<td>- Settlement and clearing (e.g., tri-party, Central Counterparty, bilateral).</td>
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<th>Data on reuse of collateral:</th>
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<tr>
<td>- Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;</td>
</tr>
</tbody>
</table>
Information to be provided in the UCITS half-yearly and annual reports and the AIF’s annual report

- Cash collateral reinvestment returns to the collective investment undertaking.

Safekeeping of collateral received by the collective investment undertaking as part of SFTs and total return swaps:

Number and names of custodians and the amount of collateral assets safe-kept by each of the custodians

Safekeeping of collateral granted by the collective investment undertaking as part of SFTs and total return swaps:

The proportion of collateral held in segregated accounts or in pooled accounts, or in any other accounts

Data on return and cost for each type of SFTs and total return swaps

broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps

[Note: section A of the annex to the Securities Financing Transactions Regulation and article 3 for relevant definitions]

Additional information that may need to be included in the annual and half-yearly long report of a UCITS scheme

The annual and half-yearly long reports of a UCITS scheme may be required to contain additional matters not referred to in COLL 4.5.7 R and COLL 4.5.8 R, such as those required by the ESMA Guidelines on ETFs and other UCITS issues, which can be found at


Signing of annual and half-yearly reports

The annual reports in COLL 4.5.7 R (1) and (2), and the half-yearly reports in COLL 4.5.8 R (1) and (2), must:

(1) in the case of an ICVC, if there is:

(a) more than one director, be approved by the board of directors and signed on their behalf by the ACD and at least one other director; or

(b) no director other than the ACD, be signed by the ACD;

(2) in the case of an AUT or ACS, if the authorised fund manager has:

(a) more than one director, be signed by at least two directors of the authorised fund manager; or

(b) only one director, be signed by the director of the authorised fund manager.

Authorised fund manager’s report

The matters set out in (1) to (13) must be included in any authorised fund manager's report, except where otherwise indicated:
(1) the names and addresses of:
   (a) the authorised fund manager;
   (b) the depository;
   (c) the registrar;
   (d) any investment adviser;
   (e) the auditor; and
   (f) for a scheme which invests in immovables, the standing independent valuer;

(2) (for an ICVC), the names of any directors other than the ACD;

(3) a statement of the authorised status of the scheme;

(4) (for an ICVC) a statement that the unitholders of the ICVC are not liable for the debts of the ICVC;

(5) the investment objectives of the authorised fund;

(6) the policy and strategy pursued for achieving those objectives;

(7) a review of the investment activities during the period to which the report relates;

(7A) a portfolio statement prepared in accordance with the requirements of the IMA SORP;

(7B) in the case of an umbrella which has more than one sub-fund, particulars in the form of a table showing, as at the end of the period to which the report relates:
   (a) for each sub-fund, the number of units in that sub-fund that were held by a second sub-fund of that umbrella; and
   (b) the value of each such holding;
   or, alternatively, a statement that there were no such holdings as at the end of that period;

(8) particulars of any fundamental changes in accordance with COLL 4.3.4 R (Fundamental change requiring prior approval by meeting) made since the date of the last report;

(9) particulars of any significant changes which have occurred in accordance with COLL 4.3.6 R (Significant change requiring pre-event notification) since the date of the last report;

(9A) in the case of a UCITS scheme or a KII-compliant NURS that does not have a significant exposure to immovables, the figure for the synthetic risk and reward indicator disclosed in its most recent key investor information document or NURS-KII document and any changes to that figure that have taken place during the period;

(10) any other information which would enable unitholders to make an informed judgement on the development of the activities of the authorised fund during this period and the results of those activities as at the end of that period;
(11) for a report on an umbrella prepared in accordance with
■ COLL 4.5.7R (2) or ■ COLL 4.5.8R (2), information required by (1) to (10)
must be given for each sub-fund, if it would vary from that given in
respect of the umbrella as a whole;

(12) for a UCITS scheme which invests a substantial proportion of its assets
in other schemes, a statement as to the maximum proportion of
management fees charged to the scheme itself and to other schemes
in which that scheme invests; and

(13) for a report on an individual sub-fund of a scheme which is an
umbrella prepared in accordance with ■ COLL 4.5.7R (4)
■ COLL 4.5.8R (3), a statement that the latest long report prepared for
the umbrella as a whole is available on request.

### Comparative information

The comparative information required by ■ COLL 4.5.7R (Contents of the
annual long report), ■ COLL 8.3.5A R (Contents of the annual report), and
■ COLL 15.5.3R (Contents of the annual report) must be shown for the last
three annual accounting periods (or all of the authorised fund’s annual
accounting periods, if fewer than three) and must set out:

(1) [deleted]

(1A) for a unit of each class in issue, a comparative table as at the end of
the period to which the report relates, prepared in accordance with
the requirements of the IMA SORP and showing at least:

(a) the performance record of a unit of that class;

(b) an indication of the actual charges and costs borne by the class;

(c) the net income distributed (or, for accumulation units, allocated)
for the unit, taking account of any sub-division or consolidation
of units that occurred during that period;

(d) the net asset value of the unit as at the end of the period;

(e) (i) (for a report of the directors of an ICVC) the number of units
of the class in issue as at the end of the period; or

(ii) (for a report of the authorised fund manager of an AUT or
an ACS) the number of units of the class that are in existence
or treated as in existence as at the end of the period; and

(f) the highest and the lowest prices of the unit during the period;

(2) [deleted]

(2A) for the scheme property, its total net asset value as at the end of the
period; and

(3) if, in the period covered by the information:

(a) the authorised fund has been the subject of any event (such as a
scheme of arrangement) having a material effect on the size of
the authorised fund, but excluding any issue or cancellation of
units for cash; or
(b) there have been changes in the investment objective and policy of the authorised fund;

(c) [deleted]

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objective and policy, and a brief description of its nature.

4.5.10A

(1) The figure for the "return before operating charges" shown in the comparative table required by COLL 4.5.10R (1A) should include all costs and charges actually borne by the class of units it describes.

(2) The indication of actual costs and charges borne by a class of units should cover pro-rata allocations of the operating charges borne by the scheme (e.g. annual management fee, fees and expenses payable to the depositary, auditors and FCA, costs of buying and selling units in an underlying scheme, etc.), any performance-related fee and direct transaction-related costs where known to the AFM (e.g. dealing commission on equity transactions and stamp duty). Where possible, the operating charges should be presented as a single figure in both pence per unit and as a percentage of net asset value.

Report of the depositary

4.5.11

(1) The depositary must make an annual report to unitholders which must be included in the annual report.

(2) The annual report must contain:

(a) a description, which may be in summary form, of the duties of the depositary under COLL 6.6.4 (General duties of the depositary) and in respect of the safekeeping of the scheme property; and

(b) a statement whether, in any material respect:

(i) the issue, sale, redemption and cancellation, and calculation of the price of the units and the application of the authorised fund's revenue, have not been carried out in accordance with the rules in this sourcebook and, where applicable, the OEIC Regulations and the instrument constituting the fund; and

(ii) the investment and borrowing powers and restrictions applicable to the authorised fund have been exceeded.

Report of the auditor

4.5.12

The authorised fund manager must ensure that the report of the auditor to the unitholders includes the following statements:

(1) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the IMA SORP, the rules in this sourcebook, and the instrument constituting the fund;

(2) whether, in the auditor's opinion, the accounts give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund (or, as the case may be, the
scheme property attributable to the sub-fund) for the annual accounting period in question and the financial position of the authorised fund or sub-fund as at the end of that period;

(3) whether the auditor is of the opinion that proper accounting records for the authorised fund (or, as the case may be, sub-fund) have not been kept or whether the accounts are not in agreement with those records;

(4) whether the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and

(5) whether the auditor is of the opinion that the information given in the report of the directors or in the report of the authorised fund manager for that period is consistent with the accounts.

Publication and availability of annual and half-yearly long report

(1) The authorised fund manager must, within four months after the end of each annual accounting period and two months after the end of each half-yearly accounting period respectively, make available and publish the long reports prepared in accordance with COLL 4.5.7R (1) to (3) (Contents of the annual long report) and COLL 4.5.8R (1) to (2) (Contents of the half-yearly long report).

(2) The reports referred to in (1) must:

(a) be supplied free of charge to any person on request;

(b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;

(c) for a UCITS scheme, be available for inspection by the public at a place designated by the authorised fund manager in each EEA State other than the United Kingdom in which units in the authorised fund were marketed before IP completion day, in English and in at least one of that other EEA State's official languages; and

(d) be sent to the FCA.

[Note: article 74 of the UCITS Directive]

Provision of annual and half-yearly long reports for master and feeder UCITS

(1) The authorised fund manager of a UCITS scheme which is a feeder UCITS must:

(a) where requested by an investor, provide copies of the annual and half-yearly long reports of its master UCITS free of charge; and

(b) file copies of the annual and half-yearly long reports of its master UCITS with the FCA.
(2) Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports of its master UCITS may be provided in a durable medium other than paper or by means of a website that meets the website conditions.

[Note: articles 63(3) and 63(5) of the UCITS Directive]

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

1. The authorised fund manager of a feeder NURS must, where requested by an investor or the FCA, provide to such person copies of the annual and half-yearly long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme free of charge.

2. Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme may be provided in a durable medium other than paper, or by means of a website that meets the website conditions.
4.6 Simplified Prospectus provisions [deleted]
4.7 Key investor information and marketing communications

Application

4.7.1 This section applies to an ICVC, an authorised fund manager of an AUT, ACS or ICVC and any other director of an ICVC where, in each case, the AUT, ACS or ICVC is:

(1) a UCITS scheme; or

(2) a non-UCITS retail scheme that is offered to retail clients if the authorised fund manager or ICVC draws up a NURS-KII document instead of a key information document for the scheme.

Application of the PRIIPs regulation to NURS

4.7.1A (1) An authorised fund manager of a non-UCITS retail scheme or an ICVC that is a non-UCITS retail scheme that is offered to retail clients may draw up either:

(a) a key information document in accordance with the PRIIPs Regulation; or

(b) until 31 December 2026, a NURS-KII document (in accordance with the exemption in article 32(2) of the PRIIPs Regulation).

(2) An authorised fund manager of a KII-compliant NURS or an ICVC that is a KII-compliant NURS will need to comply with COLL Appendix 2R (Modifications to the KII Regulation for KII-compliant NURS), which contains a modified version of the KII Regulation for KII-compliant NURS (see COLL 4.7.3AR).

(3) (a) An authorised fund manager of a KII-compliant NURS or an ICVC that is a non-UCITS retail scheme that is offered to professional clients only is not required to comply with the PRIIPs Regulation or draw up a NURS-KII document.

(b) However, these documents may be used to market the non-UCITS retail scheme to professional clients.

[Note: Article 32(1) of the PRIIPs Regulation as amended by article 17(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019]
Key investor information

4.7.2

(1) An authorised fund manager must draw up a short document in English containing key investor information for investors:

(a) in each UCITS scheme which it manages (a key investor information document); and

(b) in each KII-compliant NURS which it manages (a NURS-KII document).

(2) The words "key investor information" must be clearly stated in the key investor information document and NURS-KII document.

(3) Key investor information must include appropriate information about the essential characteristics of the UCITS scheme or KII-compliant NURS which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, therefore, to take investment decisions on an informed basis.

(4) Key investor information must provide information on the following essential elements in respect of the UCITS scheme or KII-compliant NURS:

(a) identification of the scheme and that the FCA is the competent authority of the scheme;

(b) a short description of its investment objectives and investment policy;

(c) past performance presentation or, where relevant, performance scenarios;

(d) costs and associated charges; and

(e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the scheme.

(5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.

(6) A key investor information document or NURS-KII document must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which that information is available to investors.

(6A) A key investor information document must also include:

(a) a statement that the details of the up-to-date remuneration policy are available by means of a website, including, but not limited to, the following:

(i) a description of how remuneration and benefits are calculated; and

(ii) the identities of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; and
(b) a reference to that website, and that a paper copy of the website information will be made available free of charge upon request.

(6B) A NURS-KII document must also include a statement that the details of the up-to-date remuneration policy will be made available free of charge upon request, including the following:

(a) a description of how remuneration and benefits are calculated; and

(b) the identities of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists.

(7) Key investor information must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.

(8) [deleted]

[Note: article 78 of the UCITS Directive]

Form and content of a key investor information document

4.7.3 The KII Regulation sets out the form and content of a key investor information document. Under the Regulation an authorised fund manager must ensure that each key investor information document it produces for a UCITS scheme complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in COLL Appendix 1UK (The KII Regulation).

Form and content of a NURS-KII document

4.7.3A The following must comply with COLL Appendix 2R (Modifications to the KII Regulation for KII-compliant NURS), which contains a modified version of the KII Regulation for KII-compliant NURS, when producing a NURS-KII document:

(1) an authorised fund manager of a KII-compliant NURS; and

(2) an ICVC that is a KII-compliant NURS.

4.7.3B [deleted]

Feeder NURS that produce a key information document

4.7.3C The authorised fund manager of a feeder NURS, or an ICVC that is a feeder NURS, that draws up a key information document for a retail client, should cross refer to documents related to its qualifying master scheme which
enable such clients to understand the qualifying master scheme’s key particulars including:

1. its investment strategy;

2. a description and explanation of any material differences between the risk profile of the feeder NURS and that of the qualifying master scheme; and

3. its charges, including the aggregate of the charges of the feeder NURS and its qualifying master scheme as disclosed in the feeder NURS’ most up to date prospectus.

[Note: article 6(2) of the PRIIPs Regulation]

**Translation of a key investor information document**

While the original key investor information document or NURS-KII document is required by COLL 4.7.2 R to be drawn up in English, an authorised fund manager may prepare an accurate translation of it into any language for the purpose of marketing the units of the UCITS scheme or KII-compliant NURS in the United Kingdom. Any such translation should be prepared without alterations or supplements.

**Pre-contractual information**

The key investor information document and the NURS-KII document must:

1. constitute pre-contractual information (see COBS 14.2.1A R (Provision of key investor information document or NURS-KII document));

2. be fair, clear and not misleading; and

3. be consistent with the relevant parts of the prospectus.

[Note: article 79(1) of the UCITS Directive]

1. Section 90ZA of the Act (Liability for key investor information) provides that a person will not incur civil liability solely on the basis of the key investor information document, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.

2. Article 20 of the KII Regulation prescribes the wording of a warning to investors that must be included in the “practical information” section of the key investor information document. It states that an authorised fund manager may be held liable solely on the basis of any statement contained in the document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS scheme.

3. A NURS-KII document should not include the wording of warning to investors in (2) as the limitation of liability in (1) does not apply to KII-compliant NURS.
Revision and filing of key investor information or key information document or NURS-KII document

4.7.7  
(1) An authorised fund manager must keep up to date the essential elements of:

(a) the key investor information document for each UCITS scheme which it manages; or

(b) the NURS-KII document for each KII-compliant NURS which it manages.

(2) An authorised fund manager must file the key investor information document for each UCITS scheme or the NURS-KII document for each KII-compliant NURS which it manages, and any amendments thereto, with the FCA.

(3) An authorised fund manager of a feeder UCITS or feeder NURS must, in addition to (1) and (2), file the key investor information of its master UCITS or the NURS-KII document of its qualifying master scheme, and any amendments thereto, with the FCA.

[Note: articles 63(3) and 82 of the UCITS Directive]

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

4.7.8  
(1) Authorised fund managers are advised that CESR issued two separate guidelines regarding the methodology that should be used in calculating the synthetic risk and reward indicator and the ongoing charges figure, both of which must be disclosed in the key investor information document for each UCITS scheme which they manage.

(2) In line with the KII Regulation and COLL Appendix 2R, firms in producing their key investor information documents or NURS-KII documents should take account of CESR’s methodologies in calculating the figures for the synthetic risk and reward indicators and for ongoing charges to be disclosed in those documents. For ease of reference links to these guidelines are shown below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII (CESR/10-673)


Methodology for the calculation of the ongoing charges figure in the KII (CESR/10-674)


(3) [deleted]

4.7.9  
Authorised fund managers of a UCITS scheme and KII-compliant NURS are further advised that ESMA has issued the following guidelines, which refer to matters that should be included in the key investor information for certain types of UCITS (ESMA 2012/832).
Guidelines for competent authorities and UCITS management companies: Guidelines on ETFs and other UCITS issues


Marketing communications

COBS 4.13.2R(1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) require an authorised fund manager to ensure that its marketing communications that contain an invitation to purchase units in a UCITS scheme or EEA UCITS scheme, indicate that a prospectus and key investor information exist, specifying where they may be obtained by the public or how the public may have access to them.
4.8 Notifications for UCITS master-feeder arrangements

Application

4.8.1 R This section applies to an ICVC, an authorised fund manager of an AUT, ACS or ICVC and any other director of an ICVC where, in each case, the AUT, ACS or ICVC is a UCITS scheme.

Purpose

4.8.2 G The purpose of this section is to explain the type, form and timing of the notifications that are required before an existing UCITS scheme can begin to operate as a feeder UCITS for the first time, or an existing feeder UCITS can change to a different master UCITS. The process for making those changes is set out in COLL 11.2 (Approval of a feeder UCITS).

Information to be provided to Unitholders

4.8.3 R (1) An authorised fund manager of a UCITS scheme that has been approved by the FCA to operate as a feeder UCITS, including as a feeder UCITS of a different master UCITS, must provide the following information to its unitholders at least 30 calendar days before the date when the feeder UCITS is to start to invest in units of the master UCITS or, if it has already invested in them, the date when its investment will exceed the limit applicable under COLL 5.2.11R (9) (Spread: general):

(a) a statement that the FCA has approved the investment of the feeder UCITS in units of that master UCITS;

(b) the key investor information of the feeder UCITS and the master UCITS;

(c) the date when the feeder UCITS is to start to invest in units of the master UCITS or, if it has already invested in them, the date when its investment will exceed the limit applicable under COLL 5.2.11R (9);

(d) a statement that the unitholders have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or redemption of their units without any charges other than those retained by the UCITS scheme to cover disinvestment costs.

(2) Where a UCITS marketing notification was made in relation to a feeder UCITS before IP completion day, the authorised fund manager of the feeder UCITS must
ensure that an accurate translation of the information in (1) is provided to unitholders in:

(a) the official language, or one of the official languages, of the EEA state where the UCITS marketing notification was made; or

(b) a language approved by the overseas regulator in the EEA state where the UCITS marketing notification was made.

[Note: article 64 first and second paragraphs of the UCITS Directive]

Method of providing information

4.8.4 R The authorised fund manager of the feeder UCITS must provide to unitholders the information required under COLL 4.8.3 R in a durable medium.

[Note: article 29 of the UCITS implementing Directive No 2]
Total expense ratio calculation [deleted]
Portfolio turnover calculation [deleted]
Chapter 5

Investment and borrowing powers
5.1 Introduction

Application

5.1.1 R (1) Subject to 1(A), COLL 5.1 to COLL 5.5 apply to the authorised fund manager and the depositary of an authorised fund, and to an ICVC, which is or ever has been a UCITS scheme.

(1A) The only sections of COLL 5 that apply to the authorised fund manager and the depositary of a feeder UCITS, and to an ICVC which is a feeder UCITS, are COLL 5.3 and COLL 5.8, although particular rules in COLL 5.1, COLL 5.2 and COLL 5.5 are incorporated by reference.

(2) Subject to 2(A), COLL 5.1, COLL 5.4 and COLL 5.6 apply to the authorised fund manager and depositary of an authorised fund, and to an ICVC, which is a non-UCITS retail scheme.

(2A) COLL 5.1, COLL 5.4 and COLL 5.7 apply to the authorised fund manager and the depositary of an authorised fund and to an ICVC which is a non-UCITS retail scheme operating as a fund of alternative investment funds.

(3) Paragraphs (2) and (2A) cease to apply if a non-UCITS retail scheme converts to be authorised as a UCITS scheme.

(4) [deleted]

Purpose

5.1.2 G (1) This chapter helps in achieving the statutory objective of protecting consumers by laying down minimum standards for the investments that may be held by an authorised fund. In particular:

(a) the proportion of transferable securities and derivatives that may be held by an authorised fund is restricted if those transferable securities and derivatives are not listed on an eligible market; the intention of this is to restrict investment in transferable securities or derivatives that cannot be accurately valued and readily disposed of; and

(b) authorised funds are required to comply with a number of investment rules that require the spreading of risk.
(2) Table 5.1.4G gives an overview of the permissible investments and maximum investment limits for UCITS schemes and non-UCITS retail schemes.

**Treatment of obligations**

(1) Where a rule in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the authorised fund under any other of those rules has also to be provided for.

(2) Where a rule in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered:

(a) it must be assumed that in applying any of those rules, the authorised fund must also simultaneously satisfy any other obligation relating to cover; and

(b) no element of cover must be used more than once.

**Indicative overview of investment and borrowing powers**

This table belongs to COLL 5.1.2G (2).

<table>
<thead>
<tr>
<th>Scheme investments and investment techniques</th>
<th>Limits for UCITS schemes</th>
<th>Limits for non-UCITS retail schemes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved securities</td>
<td>Permissible investment</td>
<td>Maximum limit</td>
</tr>
<tr>
<td>Yes</td>
<td>None</td>
<td>Yes</td>
</tr>
<tr>
<td>Transferable securities that are not approved securities</td>
<td>Yes 10%</td>
<td>Yes</td>
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<td>Government and public securities</td>
<td>Yes</td>
<td>None</td>
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<tr>
<td>Regulated schemes other than qualified investor schemes and long-term asset funds</td>
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<td>None</td>
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<td>Unregulated schemes, qualified investor schemes, and long-term asset funds</td>
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<td>Yes</td>
</tr>
<tr>
<td>Warrants</td>
<td>Yes</td>
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</tr>
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<td>Investment trusts</td>
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<tr>
<td>Deposits</td>
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<td>None</td>
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<td>Derivatives</td>
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<tr>
<td>Immovables (i.e real property)</td>
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<td>Gold</td>
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<td>N/A</td>
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<td>Hedging</td>
<td>Yes</td>
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<td>Stock lending</td>
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<td>None</td>
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<td>Underwriting</td>
<td>Yes</td>
<td>None</td>
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<td>Borrowing</td>
<td>Yes 10% (T)</td>
<td>Yes</td>
</tr>
<tr>
<td>Scheme investments and investment techniques</td>
<td>Limits for UCITS schemes</td>
<td>Limits for non-UCITS retail schemes</td>
</tr>
<tr>
<td>---------------------------------------------</td>
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</tr>
<tr>
<td>Cash and near cash</td>
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<td>Note:</td>
<td></td>
<td>None</td>
</tr>
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<td>A percentage</td>
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<tr>
<td>&quot;(C)&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&quot;(D)&quot;</td>
<td></td>
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</tr>
</tbody>
</table>

Note: Meaning of terms used:
- A percentage: An upper limit (though there may be limits of other kinds).
- "(T)": temporary only - see COLL 5.5.4R(4)
- "N/A": Not applicable
- "(C)": In the case of a non-UCITS retail scheme operating as a FAIF there is no maximum limit - see COLL 5.7.7 R.
- "(D)": The second scheme would also need to meet the applicable requirements specified in the rules.
### 5.2 General investment powers and limits for UCITS schemes

#### Application

**5.2.1**

(1) This section applies to an ICVC, an ACD, an authorised fund manager of an AUT or ACS and a depositary of an ICVC, AUT or ACS where such ICVC, AUT or ACS is a UCITS scheme, in accordance with **COLL 5.2.2 R** (Table of application).

(2) [deleted]

#### Table of application

**5.2.2**

This table belongs to **COLL 5.2.1 R**.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC, AUT or ACS</th>
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### Section 5.2 : General investment powers and limits for UCITS schemes

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<th>Authorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regulated money market fund</th>
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### 5.2.2A

In addition to the parts of CESR’s UCITS eligible assets guidelines specifically referred to in this section, the authorised fund manager of a UCITS scheme should have regard to the other parts of those guidelines when applying the rules in this section. CESR’s UCITS eligible assets guidelines are available at [https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf).

### Prudent spread of risk

1. An authorised fund manager must ensure that, taking account of the investment objectives and policy of the UCITS scheme as stated in the most recently published prospectus, the scheme property of the UCITS scheme aims to provide a prudent spread of risk.

2. The rules in this section relating to spread of investments do not apply until the expiry of a period of six months after the date of which the authorisation order, in respect of the UCITS scheme, takes effect or on which the initial offer commenced, if later, provided that (1) is complied with during such period.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
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<th>Authorised fund manager of an AUT or ACS</th>
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<td>5.2.34G</td>
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</table>

Note: x means "applies"
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. the kind of property in which the scheme property may be invested;
2. the proportion of the capital property of the UCITS scheme that may be invested in assets of any description;
3. the descriptions of transactions permitted; and
4. the borrowing powers of the UCITS scheme.

5.2.4A G

Investment powers and limits for UCITS schemes that are regulated money market funds are set out in the Money Market Funds Regulation. Subject to complying with that Regulation, the instrument constituting the fund may further restrict:

1. the kind of money market instruments in which the scheme property may be invested;
2. the proportion of the capital property of the UCITS scheme to be invested in money market instruments of any description;
3. the descriptions of transactions permitted; and
4. the borrowing powers of the UCITS scheme.

Valuation

5.2.5 R

1. In this chapter, the value of the scheme property of a UCITS scheme means the net value determined in accordance with ■ COLL 6.3 (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.

2. When valuing the scheme property for the purposes of this chapter:
   a. the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of ■ COLL 6.3 (Valuation and pricing);
   b. initial outlay is to be regarded as remaining part of the scheme property; and
   c. if the authorised fund manager, having taken reasonable care, determines that the UCITS scheme will become entitled to any unrealised profit which has been made on account of a transaction in derivatives, that prospective entitlement is to be regarded as part of the scheme property.

3. When valuing the scheme property of a dual-priced authorised fund, the cancellation basis of valuation referred to in ■ COLL 6.3.3 R (2) (Valuation) is to be applied.
Valuation guidance

5.2.6

It should be noted that for the purpose of COLL 5.2.5 R, COLL 6.3 may be affected by specific provisions in this chapter such as, for example, COLL 5.4.6 R (Treatment of collateral).

UCITS schemes: permitted types of scheme property

5.2.6A

The scheme property of a UCITS scheme must, except where otherwise provided in the rules in this chapter, consist solely of any or all of:

(1) transferable securities;
(2) approved money-market instruments;
(3) units in collective investment schemes;
(4) derivatives and forward transactions;
(5) deposits; and
(6) (for an ICVC) movable and immovable property that is essential for the direct pursuit of the ICVC’s business;

in accordance with the rules in this section.

[Note: articles 50(1) (in conjunction with other rules in this section) and 50(3) of the UCITS Directive]

Transferable securities

5.2.7

(1) A transferable security is an investment which is any of the following:
   (a) a share;
   (b) a debenture;
   (ba) an alternative debenture;
   (c) a government and public security;
   (d) a warrant; or
   (e) a certificate representing certain securities.

(2) An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.

(3) In applying (2) to an investment which is issued by a body corporate, and which is a share or a debenture, the need for any consent on the part of the body corporate or any members or debenture holders of it may be ignored.

(4) An investment is not a transferable security unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the investment.
Investment in transferable securities

(1) A UCITS scheme may invest in a transferable security only to the extent that the transferable security fulfils the following criteria:

(a) the potential loss which the UCITS scheme may incur with respect to holding the transferable security is limited to the amount paid for it;

(b) its liquidity does not compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder (see § COLL 6.2.16 R (3));

(c) reliable valuation is available for it as follows:

(i) in the case of a transferable security admitted to or dealt in on an eligible market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is a valuation on a periodic basis which is derived from information from the issuer of the transferable security or from competent investment research;

(d) appropriate information is available for it as follows:

(i) in the case of a transferable security admitted to or dealt in on an eligible market, where there is regular, accurate and comprehensive information available to the market on the transferable security or, where relevant, on the portfolio of the transferable security;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is regular and accurate information available to the authorised fund manager on the transferable security or, where relevant, on the portfolio of the transferable security;

(e) it is negotiable; and

(f) its risks are adequately captured by the risk management process of the authorised fund manager.

(2) Unless there is information available to the authorised fund manager that would lead to a different determination, a transferable security which is admitted to or dealt in on an eligible market shall be presumed:

(a) not to compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder; and

(b) to be negotiable.

[Note: article 2(1) of the UCITS eligible assets Directive]
Closed end funds constituting transferable securities

5.2.7C

A unit in a closed end fund shall be taken to be a transferable security for the purposes of investment by a UCITS scheme, provided it fulfils the criteria for transferable securities set out in COLL 5.2.7A R, and either:

1. where the closed end fund is constituted as an investment company or a unit trust:
   (a) it is subject to corporate governance mechanisms applied to companies; and
   (b) where another person carries out asset management activity on its behalf, that person is subject to national regulation for the purpose of investor protection; or

2. where the closed end fund is constituted under the law of contract:
   (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
   (b) it is managed by a person who is subject to national regulation for the purpose of investor protection.

[Note: articles 2(2)(a) and (b) of the UCITS eligible assets Directive]

5.2.7D

1. An authorised fund manager should not invest the scheme property of a UCITS scheme in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.

2. When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the authorised fund manager should consider whether the contract on which the closed end fund is based provides its investors with rights to:
   (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
   (b) control the investment policy of the closed end fund through appropriate mechanisms.

3. The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

[Note: CESR’s UCITS eligible assets guidelines with respect to articles 2(2) and 2(2)(b)(ii) of the UCITS eligible assets Directive]

Transferable securities linked to other assets

5.2.7E

1. A UCITS scheme may invest in any other investment which shall be taken to be a transferable security for the purposes of investment by a UCITS scheme provided the investment:
   (a) fulfils the criteria for transferable securities set out in COLL 5.2.7A R; and
(b) is backed by or linked to the performance of other assets, which may differ from those in which a UCITS scheme can invest.

(2) Where an investment in (1) contains an embedded derivative component (see COLL 5.2.19R (3A)), the requirements of this section with respect to derivatives and forwards will apply to that component.

[Note: articles 2(2)(c) and 2(3) of the UCITS eligible assets Directive]

Approved money-market instruments

An approved money-market instrument is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

[Note: article 2(1)(o) of the UCITS Directive]

A money-market instrument shall be regarded as normally dealt in on the money market if it:

1. has a maturity at issuance of up to and including 397 days;
2. has a residual maturity of up to and including 397 days;
3. undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
4. has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (1) or (2) or is subject to yield adjustments as set out in (3).

[Note: article 3(2) of the UCITS eligible assets Directive]

(1) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the authorised fund manager to redeem units at the request of any qualifying unitholder (see COLL 6.2.16 R (3)).

(2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:

(a) enabling the authorised fund manager to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

(b) based either on market data or on valuation models including systems based on amortised costs.

(3) A money-market instrument that is normally dealt in on the money market and is admitted to or dealt in on an eligible market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the
authorised fund manager that would lead to a different determination.

[Note: article 4 of the UCITS eligible assets Directive]

Guidance on assessing liquidity and quality of money-market instruments

5.2.71

(1) The authorised fund manager should assess the liquidity of a money-market instrument in accordance with CESR’s UCITS eligible assets guidelines with respect to article 4(1) of the UCITS eligible assets Directive.

(2) Where an approved money-market instrument forms part of the scheme property of a qualifying money market fund, the authorised fund manager should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive.]

Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market

5.2.8

(1) [deleted]

(2) [deleted]

(3) Transferable securities and approved money-market instruments held within a UCITS scheme must be:
   (a) admitted to or dealt in on an eligible market within COLL 5.2.10 R (1)(a) (Eligible markets: requirements); or
   (b) dealt in on an eligible market within COLL 5.2.10 R (1)(b); or
   (c) admitted to or dealt in on an eligible market within COLL 5.2.10 R (2); or
   (d) for an approved money-market instrument not admitted to or dealt in on an eligible market, within COLL 5.2.10AR (1); or
   (e) recently issued transferable securities, provided that:
      (i) the terms of issue include an undertaking that application will be made to be admitted to an eligible market; and
      (ii) such admission is secured within a year of issue.

(4) However, a UCITS scheme may invest no more than 10% of the scheme property in transferable securities and approved money-market instruments other than those referred to in (3).

[Note: article 50(1)(a)-(d) and (h) and (2)(a) of the UCITS Directive and article 3(1) of the UCITS eligible assets Directive]
COLL 5: Investment and borrowing powers

Section 5.2: General investment powers and limits for UCITS schemes

5.2.9 Eligible markets regime: purpose

1. This section specifies criteria based on those in article 50 of the UCITS Directive, as to the nature of the markets in which the property of a UCITS scheme may be invested.

2. Where a market ceases to be eligible, investments on that market cease to be approved securities. The 10% restriction in COLL 5.2.8 R (4) applies, and exceeding this limit because a market ceases to be eligible will generally be regarded as a breach beyond the control of the authorised fund manager.

5.2.9A The ability to hold up to 10% of the scheme property in ineligible assets under COLL 5.2.8 R (4) is subject to the following limitations:

1. for a qualifying money market fund, the 10% restriction is limited to high quality money market instruments with a maturity or residual maturity of not more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days.

2. [deleted]

5.2.10 Eligible markets: requirements

1. A market is eligible for the purposes of the rules in this sourcebook if it is:
   (a) a regulated market;
   (b) a market in the United Kingdom or an EEA State which is regulated, operates regularly and is open to the public; or
   (c) any market within (2).

2. A market not falling within (1)(a) and (b) is eligible for the purposes of the rules in this sourcebook if:
   (a) the authorised fund manager, after consultation with and notification to the depositary (and in the case of an ICVC, any other directors), decides that market is appropriate for investment of, or dealing in, the scheme property;
   (b) the market is included in a list in the prospectus; and
   (c) the depositary has taken reasonable care to determine that:
      (i) adequate custody arrangements can be provided for the investment dealt in on that market; and
      (ii) all reasonable steps have been taken by the authorised fund manager in deciding whether that market is eligible.

3. In (2)(a), a market must not be considered appropriate unless it:
   (a) is regulated;
   (b) operates regularly;
   (c) is recognised as a market or exchange or as a self-regulating organisation by an overseas regulator;
   (d) is open to the public;
(e) is adequately liquid; and
(f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

Money-market instruments with a regulated issuer

1. (In addition to instruments admitted to or dealt in on an eligible market) a UCITS scheme may invest in an approved money-market instrument provided it fulfils the following requirements:
   (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
   (b) the instrument is issued or guaranteed in accordance with COLL 5.2.10B R.

[Note: article 50(1)(h)(i) to (iii) of the UCITS Directive]

2. The issue or the issuer of a money-market instrument, other than one dealt in on an eligible market, shall be regarded as regulated for the purpose of protecting investors and savings if:
   (a) the instrument is an approved money-market instrument;
   (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with COLL 5.2.10C R; and
   (c) the instrument is freely transferable.

[Note: article 5(1) of the UCITS eligible assets Directive]

Issuers and guarantors of money-market instruments

1. A UCITS scheme may invest in an approved money-market instrument if it is:
   (a) issued or guaranteed by any one of the following:
      (i) a central authority of the United Kingdom or an EEA State or, if the EEA State is a federal state, one of the members making up the federation;
      (ii) a regional or local authority of the United Kingdom or an EEA State;
      (iii) the Bank of England, the European Central Bank or a central bank of an EEA State;
      (iv) the European Union or the European Investment Bank;
      (v) a non-EEA State or, in the case of a federal state, one of the members making up the federation;
      (vi) a public international body to which the United Kingdom or one or more EEA States belong; or
   (b) issued by a body, any securities of which are dealt in on an eligible market; or
   (c) issued or guaranteed by an establishment which is:
      (i) subject to prudential supervision in accordance with criteria defined by UK or EU law; or
(ii) subject to and complies with prudential rules considered by the FCA to be at least as stringent as those laid down by UK or EU law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

(a) it is located in the European Economic Area;
(b) it is located in an OECD country belonging to the Group of Ten;
(c) it has at least investment grade rating;
(d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by UK or EU law.

[Note: article 6 of the UCITS eligible assets Directive]

Appropriate information for money-market instruments

(1) In the case of an approved money-market instrument within COLL 5.2.10BR (1)(b) or issued by a body of the type referred to in COLL 5.2.10E G; or which is issued by an authority within COLL 5.2.10BR (1)(a)(ii) or a public international body within COLL 5.2.10BR (1)(a)(vi) but is not guaranteed by a central authority within COLL 5.2.10BR (1)(a)(i), the following information must be available:

(a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
(b) updates of that information on a regular basis and whenever a significant event occurs; and
(c) available and reliable statistics on the issue or the issuance programme.

(2) In the case of an approved money-market instrument issued or guaranteed by an establishment within COLL 5.2.10BR (1)(c), the following information must be available:

(a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
(b) updates of that information on a regular basis and whenever a significant event occurs; and
(c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.

(3) In the case of an approved money-market instrument:

(a) within COLL 5.2.10BR (1)(a)(i), (iv) or (v); or
(b) which is issued by an authority within COLL 5.2.10BR (1)(a)(ii) or a public international body within COLL 5.2.10BR (1)(a)(vi) and is guaranteed by a central authority within COLL 5.2.10BR (1)(a)(i);
information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

[Note: articles 5(2), (3) and (4) of the UCITS eligible assets Directive]

5.2.10D

1. The appropriately qualified third parties referred to in COLL 5.2.10ER(1)(a) should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.

(2) The regular updates of information referred to in COLL 5.2.10ER(1)(b) and (2)(b) should normally occur on at least an annual basis.

[Note: CESR’s UCITS eligible assets guidelines with respect to articles 5(2)(b) and (c) of the UCITS eligible assets Directive]

Other money-market instruments with a regulated issuer

5.2.10E

1. In addition to instruments admitted to or dealt in on an eligible market, a UCITS scheme may also with the express consent of the FCA (which takes the form of a waiver under sections 138A and 138B of the Act as applied by section 250 of the Act or regulation 7 of the OEIC Regulations) invest in an approved money-market instrument provided:

(a) the issue or issuer is itself regulated for the purpose of protecting investors and savings in accordance with COLL 5.2.10AR (2);

(b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of COLL 5.2.10BR (1)(a), (b) or COLL 5.2.10BR (1)(c);

and

(c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the requirements of the Companies Act 2006 applicable to public companies limited by shares or by guarantee, or private companies limited by shares or by guarantee, or, for companies incorporated in the EEA, Directive 2013/34/EU, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.

(3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by UK or EU law or an establishment which is subject to and complies with prudential rules considered by the FCA (in accordance with COLL 5.2.10BR (2)) to be at least as stringent as those laid down by UK or EU law.

[Note: article 50(1)(h)(iv) of the UCITS Directive and article 7 of the UCITS eligible assets Directive]
Spread: general

5.2.11

(1) This rule does not apply in respect of a transferable security or an approved money-market instrument to which COLL 5.2.12R (Spread: government and public securities) applies.

(2) For the purposes of this rule companies included in the same group for the purposes of consolidated accounts as defined in accordance with section 399 of Companies Act 2006, Directive 2013/34/EU or, in the same group in accordance with international accounting standards, are regarded as a single body.

(3) Not more than 20% in value of the scheme property is to consist of deposits with a single body.

(4) Not more than 5% in value of the scheme property is to consist of transferable securities or approved money-market instrument issued by any single body.

(5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the scheme property. Covered bonds need not be taken into account for the purpose of applying the limit of 40%.

(5A) The limit of 5% in (4) is raised to 25% in value of the scheme property in respect of covered bonds, provided that when a UCITS scheme invests more than 5% in covered bonds issued by a single body, the total value of covered bonds held must not exceed 80% in value of the scheme property.

(6) In applying (4) and (5), certificates representing certain securities are to be treated as equivalent to the underlying security.

(7) The exposure to any one counterparty in an OTC derivative transaction must not exceed 5% in value of the scheme property; this limit being raised to 10% where the counterparty is an approved bank.

(8) Not more than 20% in value of the scheme property is to consist of transferable securities and approved money-market instrument issued by the same group (as referred to in (2)).

(9) Not more than 20% in value of the scheme is to consist of the units of any one collective investment scheme.

(10) In applying the limits in (3),(4),(5), (6) and (7) in relation to a single body, and subject to (5A), not more than 20% in value of the scheme property is to consist of any combination of two or more of the following:

(a) transferable securities (including covered bonds) or approved money-market instrument issued by that body; or

(b) deposits made with that body; or

(c) exposures from OTC derivatives transactions made with that body.

(11) [deleted]
(12) [deleted]

(13) [deleted]

(14) [deleted]

[Note: article 52 of the UCITS Directive]

Guidance on spread: general

(1) [deleted]

(2) [deleted]

(3) In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it and other companies in its group on behalf of the scheme.

Counterparty risk and issuer concentration

(1) An authorised fund manager of a UCITS scheme must ensure that counterparty risk arising from an OTC derivative transaction is subject to the limits set out in ■ COLL 5.2.11R (7) and ■ COLL 5.2.11R (10).

(2) When calculating the exposure of a UCITS scheme to a counterparty in accordance with the limits in ■ COLL 5.2.11R (7), the authorised fund manager must use the positive mark-to-market value of the OTC derivative contract with that counterparty.

(3) An authorised fund manager may net the OTC derivative positions of a UCITS scheme with the same counterparty, provided:

(a) it is able legally to enforce netting agreements with the counterparty on behalf of the UCITS scheme; and

(b) the netting agreements in (a) do not apply to any other exposures the UCITS scheme may have with that same counterparty.

(4) An authorised fund manager of a UCITS scheme may reduce the exposure of the scheme property to a counterparty to an OTC derivative transaction through the receipt of collateral. Collateral received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

(5) An authorised fund manager of a UCITS scheme must take collateral into account in calculating exposure to counterparty risk in accordance with the limits in ■ COLL 5.2.11BR (7) when it passes collateral to the counterparty to an OTC derivative transaction on behalf of the UCITS scheme.

(6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the authorised fund manager is able legally to enforce netting arrangements with this counterparty on behalf of the UCITS scheme.
(7) An authorised fund manager of a UCITS scheme must calculate the issuer concentration limits referred to in COLL 5.2.11 R on the basis of the underlying exposure created through the use of OTC derivatives in accordance with the commitment approach.

(8) In relation to exposures arising from OTC derivative transactions, as referred to in COLL 5.2.11R (10), the authorised fund manager must include in the calculation any counterparty risk relating to the OTC derivative transactions.

[Note: article 43 of the UCITS implementing Directive]

Spread: government and public securities

(1) This rule applies in respect of a transferable security or an approved money-market instrument ("such securities") that is issued by:

   (a) the United Kingdom or an EEA State;
   (b) a local authority of the United Kingdom or an EEA State;
   (c) a non-EEA State; or
   (d) a public international body to which the UK or one or more EEA States belong.

(2) Where no more than 35% in value of the scheme property is invested in such securities issued by any one body, there is no limit on the amount which may be invested in such securities or in any one issue.

(3) An authorised fund may invest more than 35% in value of the scheme property in such securities issued by any one body provided that:

   (a) the authorised fund manager has before any such investment is made consulted with the depositary and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the authorised fund;
   (b) no more than 30% in value of the scheme property consists of such securities of any one issue;
   (c) the scheme property includes such securities issued by that or another issuer, of at least six different issues; and
   (d) the disclosures in COLL 3.2.6R(8) (Table: contents of the instrument constituting the fund) and COLL 4.2.5R(3)(i) (Table: contents of the prospectus) have been made.

(4) [deleted]

(5) In this rule in relation to such securities:

   (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
   (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.
(6) Notwithstanding COLL 5.2.11R (1) and subject to (2) and (3), in applying the 20% limit in COLL 5.2.11R (10) with respect to a single body, such securities issued by that body shall be taken into account.

Investment in collective investment schemes

5.2.13

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 (e):

(1) the second scheme must:
   (a) be a UCITS scheme or satisfy the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or
   (b) be a recognised scheme that is authorised by the supervisory authorities of Guernsey, Jersey or the Isle of Man (provided the requirements of COLL 5.2.13AR are met); or
   (c) be authorised as a non-UCITS retail scheme (provided the requirements of COLL 5.2.13AR(1), (3) and (4) are met); or
   (d) be authorised in an EEA State (provided the requirements of COLL 5.2.13AR are met); or
   (e) be authorised by the competent authority of an OECD member country (other than an 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 COLL 5.2.13AR are met);

(2) the second scheme must comply, where relevant, with COLL 5.2.15 R (Investment in associated collective investment schemes) and COLL 5.2.16 R (Investment in other group schemes);

(3) the second scheme must have terms which prohibit more than 10% in value of the scheme property consisting of units in collective investment schemes; and

(4) where the second scheme is an umbrella, the provisions in (2) and (3) and COLL 5.2.11 R (Spread: general) apply to each sub-fund as if it were a separate scheme.

5.2.13A

The requirements referred to in COLL 5.2.13R(1) are that:

(1) the second scheme is an undertaking:
   (a) with the sole object of collective investment in transferable securities or in other liquid financial assets, as referred to in this chapter, of capital raised from the public and which operate on the principle of risk-spreading; and
   (b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets.
Section 5.2 : General investment powers and limits for UCITS schemes

(1) (action taken by a scheme to ensure that the price of its units on an investment exchange does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption);

(2) the second scheme is authorised under laws which provide that they are subject to supervision considered by the FCA to be equivalent to that laid down in the law of the United Kingdom, and that cooperation between the FCA and the supervisory authorities of the second scheme is sufficiently ensured;

(3) the level of protection for unitholders in the second scheme is equivalent to that provided for unitholders in a UCITS scheme, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and approved money market instruments are equivalent to the requirements of this chapter; and

(4) the business of the second scheme is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

Qualifying non-UCITS collective investment schemes

(1) COLL 9.3 gives further detail as to the recognition of a scheme under section 272 of the Act.

(2) A scheme which has the power to invest in gold or immovables would not meet the criteria set out in COLL 5.2.13R (1).

(3) In determining whether a scheme (other than a UCITS) meets the requirements of COLL 5.2.13AR for the purposes of COLL 5.2.13R (1), 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 depositary/custodian with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent depositary/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.
(4) The requirement for supervisory equivalence, as described in COLL 5.2.13AR(2), also applies to schemes (that are not EEA UCITS schemes) established in 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.

Investment in associated collective investment schemes

1. A UCITS scheme must not invest in or dispose of units in another collective investment scheme (the second scheme) if the second scheme is managed or operated by (or, for an ICVC, whose ACD is) the authorised fund manager of the investing UCITS scheme or an associate of that authorised fund manager, unless:
   
   a. the prospectus of the investing UCITS scheme clearly states that the property of that investing scheme may include such units; and
   
   b. COLL 5.2.16 R (Investment in other group schemes) is complied with.

2. Where a sub-fund of a UCITS scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:
   
   a. COLL 5.2.15R (1)(a) is modified as follows - the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and
   
   b. COLL 5.2.15R (1)(b) is modified as follows - COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "UCITS scheme" are taken to be references to the investing or disposing sub-fund and references to the "second scheme" are taken to be references to the second sub-fund.

Investment in other group schemes

1. Where:
   
   a. an investment or disposal is made under COLL 5.2.15; and
   
   b. there is a charge in respect of such investment or disposal;

   the authorised fund manager of the UCITS scheme making the investment or disposal must pay the UCITS scheme the amounts referred to in (2) or (3) within four business days following the date of the agreement to invest or dispose.

2. When an investment is made, the amount referred to in (1) is either:
   
   a. any amount by which the consideration paid by the UCITS scheme for the units in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly issued or sold by it; or
(b) if such price cannot be ascertained by the authorised fund manager of the authorised fund, the maximum amount of any charge permitted to be made by the seller of units in the second scheme.

(3) When a disposal is made, the amount referred to in (1) is any charge made for the account of the authorised fund manager or operator of the second scheme or an associate of any of them in respect of the disposal.

(4) In this rule:

(a) any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second scheme, which is applied for the benefit of the second scheme and is, or is like, a dilution levy made in accordance with COLL 6.3.8 R (Dilution) is to be treated as part of the price of the units and not as part of any charge; and

(b) any charge made in respect of an exchange of units in one sub-fund or separate part of the second scheme for units in another sub-fund or separate part of that scheme is to be included as part of the consideration paid for the units.

Investment in nil and partly paid securities

5.2.17 R

(1) [deleted]

(2) A transferable security or an approved money-market instrument on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the UCITS scheme, at the time when payment is required, without contravening the rules in this chapter.

Investment in securitisation positions

5.2.17A R

Where an authorised fund manager is exposed to a securitisation that does not meet the requirements provided for in the Securitisation Regulation, it must, in the best interests of the investors in the relevant UCITS scheme, act and take corrective action, if appropriate.

[Note: article 50a of the UCITS Directive]

5.2.17B G

Article 5 (Due diligence requirements for institutional investors) of the Securitisation Regulation applies to authorised fund managers in combination with COLL 5.2.17AR.

5.2.18 R

[deleted]

Derivatives: general

5.2.19 R

(1) A transaction in derivatives or a forward transaction must not be effected for a UCITS scheme unless:
(a) the transaction is of a kind specified in COLL 5.2.20 R (Permitted transactions (derivatives and forwards)); and

(b) the transaction is covered, as required by COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).

(2) Where a UCITS scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in COLL 5.2.11 R (Spread: general) and COLL 5.2.12 R (Spread: government and public securities) save as provided in (4).

(3) Where a transferable security or approved money-market instrument embeds a derivative, this must be taken into account for the purposes of complying with this section.

(3A) (a) A transferable security or an approved money-market instrument will embed a derivative if it contains a component which fulfils the following criteria:

(i) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or approved money-market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone derivative;

(ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and

(iii) it has a significant impact on the risk profile and pricing of the transferable security or approved money-market instrument.

(b) A transferable security or an approved money-market instrument does not embed a derivative where it contains a component which is contractually transferable independently of the transferable security or the approved money-market instrument. That component shall be deemed to be a separate instrument.

[Note: article 10 of the UCITS eligible assets Directive]

(4) Where a scheme invests in an index based derivative, provided the relevant index falls within COLL 5.2.20AR (Financial indices underlying derivatives) the underlying constituents of the index do not have to be taken into account for the purposes of COLL 5.2.11 R and COLL 5.2.12 R.

(5) The relaxation in (4) is subject to the authorised fund manager taking account of COLL 5.2.3 R (Prudent spread of risk).

Guidance on transferable securities and money-market instruments embedding derivatives

5.2.19A

(1) Collateralised debt obligations (CDOs) or asset-backed securities using derivatives, with or without an active management, will generally not be considered as embedding a derivative except if:
(a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or

(b) they are not sufficiently diversified.

(2) Where a transferable security or approved money-market instrument embedding a derivative is structured as an alternative to an OTC derivative, the requirements set out in COLL 5.2.23 R with respect to transactions in OTC derivatives will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a scheme, which should be considered as embedding a derivative. Such a product offers an alternative to the use of an OTC derivative, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.

(3) The following list of transferable securities and approved money-market instruments, which is illustrative and non-exhaustive, could be assumed to embed a derivative:

(a) credit linked notes;

(b) transferable securities or approved money-market instruments whose performance is linked to the performance of a bond index;

(c) transferable securities or approved money-market instruments whose performance is linked to the performance of a basket of shares, with or without active management;

(d) transferable securities or approved money-market instruments with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;

(e) convertible bonds; and

(f) exchangeable bonds.

(4) Schemes cannot use transferable securities or approved money-market instruments which embed a derivative to circumvent the rules in this section.

(5) Transferable securities and approved money-market instruments which embed a derivative are subject to the rules applicable to derivatives as required by this section. It is the authorised fund manager’s responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded derivatives and on their impact on the scheme, taking into account its stated investment objective and risk profile.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 10 of the UCITS eligible assets Directive]

Permitted transactions (derivatives and forwards)

(1) A transaction in a derivative must:

(a) be in an approved derivative; or
(b) be one which complies with [COLL 5.2.23 R (OTC transactions in derivatives)].

(2) The underlying of a transaction in a derivative must consist of any one or more of the following to which the scheme is dedicated:

(a) transferable securities permitted under [COLL 5.2.8 R (3)(a) to (c) and (e)]
(b) approved money-market instruments permitted under [COLL 5.2.8 R (3)(a) to (d)]
(c) deposits permitted under [COLL 5.2.26 R (Investment in deposits)]
(d) derivatives permitted under this rule
(e) collective investment scheme units permitted under [COLL 5.2.13 R (Investment in collective investment schemes)]
(f) financial indices which satisfy the criteria set out in [COLL 5.2.20A R]
(g) interest rates
(h) foreign exchange rates; and
(i) currencies.

[Note: article 8(1)(a) of the UCITS eligible assets Directive]

(3) A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.

(4) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the instrument constituting the fund and the most recently published prospectus.

(5) A transaction in a derivative must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more transferable securities, approved money-market instruments, units in collective investment schemes or derivatives provided that a sale is not to be considered as uncovered if the conditions in [COLL 5.2.22R (1) (Requirement to cover sales), as read in accordance with the guidance at [COLL 5.2.22A G], are satisfied.

(6) Any forward transaction must be made with an eligible institution or an approved bank.

(7) A derivative includes an instrument which fulfils the following criteria:

(a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
(b) it does not result in the delivery or the transfer of assets other than those referred to in [COLL 5.2.6A R (UCITS schemes: permitted types of scheme property) including cash;
(c) in the case of an OTC derivative, it complies with the requirements in [COLL 5.2.23 R (OTC transactions in derivatives);
(d) its risks are adequately captured by the risk management process of the authorised fund manager, and by its internal control mechanisms in the case of risks of asymmetry of information.
between the authorised fund manager and the counterparty to the derivative, resulting from potential access of the counterparty to non-public information on persons whose assets are used as the underlying by that derivative.

[Note: article 8(2) of the UCITS eligible assets Directive]

(8) A UCITS scheme may not undertake transactions in derivatives on commodities.

[Note: article 8(5) of the UCITS eligible assets Directive]

Financial indices underlying derivatives

(1) The financial indices referred to in COLL 5.2.20R (2)(f) are those which satisfy the following criteria:

(a) the index is sufficiently diversified;

(b) the index represents an adequate benchmark for the market to which it refers; and

(c) the index is published in an appropriate manner.

(2) A financial index is sufficiently diversified if:

(a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;

(b) where it is composed of assets in which a UCITS scheme is permitted to invest, its composition is at least diversified in accordance with the requirements with respect to spread and concentration set out in this section; and

(c) where it is composed of assets in which a UCITS scheme cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

(3) A financial index represents an adequate benchmark for the market to which it refers if:

(a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;

(b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and

(c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.

(4) A financial index is published in an appropriate manner if:

(a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and

(b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
(5) Where the composition of underlyings of a transaction in a derivative does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to COLL 5.2.20R (2), be regarded as a combination of those underlyings.

[Note: article 9 of the UCITS eligible assets Directive]

Guidance on financial indices underlying derivatives

5.2.20B

(1) An index based on derivatives on commodities or an index on property may be regarded as a financial index of the type referred to in COLL 5.2.20R (2)(f) provided it satisfies the criteria for financial indices set out in COLL 5.2.20A R.

(2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the UCITS scheme when assessing compliance with the requirements on cover for transactions in derivatives and forward transactions set out in COLL 5.3.3A R and spread set out in COLL 5.2.11 R.

(3) (a) In order to avoid undue concentration, where derivatives on an index composed of assets in which a UCITS scheme cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

(b) If derivatives on that index are used for risk-diversification purposes, provided that the exposure of the UCITS scheme to that index complies with the 5%, 10% and 40% ratios required by COLL 5.2.11R (4) and (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

[Note: UCITS eligible assets guidelines with respect to article 9 of the UCITS eligible assets Directive]

(3A) Authorised fund managers of UCITS schemes are advised that UCITS schemes should not be invested in commodity indices that do not consist of different commodities, as provided by paragraph 50 of ESMA’s guidelines on ETFs and other UCITS issues (ESMA 2012/832).

Transactions for the purchase of property

5.2.21

A derivative or forward transaction which will or could lead to the delivery of property for the account of the UCITS scheme may be entered into only if:

(1) that property can be held for the account of the UCITS scheme; and
(2) the authorised fund manager having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the rules in this sourcebook.

### Requirement to cover sales

5.2.22 R

(1) No agreement by or on behalf of a UCITS scheme to dispose of property or rights may be made unless:

- (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the UCITS scheme by delivery of property or the assignment (or, in Scotland, assignation) of rights; and
- (b) the property and rights at (a) are owned by the UCITS scheme at the time of the agreement.

(2) Paragraph (1) does not apply to a deposit.

(3) [deleted]

(4) [deleted]

### Guidance on requirement to cover sales

5.2.22A G [deleted]

(1) In the FCA’s view the requirement in COLL 5.2.22R (1)(a) can be met where:

- (a) the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
- (b) the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:
  - (i) cash;
  - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
  - (iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

(2) In the asset classes referred to in (1), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market.

### OTC transactions in derivatives

5.2.23 R

A transaction in an OTC derivative under COLL 5.2.20 R (1) (b) or, for the purposes of (1) only, executed by or on behalf of a regulated money market fund, must be:
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;

(b) a person whose permission (including any requirements or limitations), as published in the Financial Services Register, 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;

(2) on approved terms; the terms of the transaction in derivatives are approved only if the authorised fund manager:

(a) carries out, at least daily, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value and which does not rely only on market quotations by the counterparty; and

(b) can enter into one or more further transactions to sell, liquidate or close out that transactions at any time, at its fair value;

(3) capable of reliable valuation; a transaction in derivatives is capable of reliable valuation only if the authorised fund manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy:

(a) on the basis of an up-to-date market value which the authorised fund manager and the depositary have agreed is reliable; or

(b) if the value referred to in (a) is not available, on the basis of a pricing model which the authorised fund manager and the depositary have agreed uses an adequate recognised methodology; and

(4) subject to verifiable valuation; a transaction in derivatives is subject to verifiable valuation only if, throughout the life of the derivative (if the transaction is entered into) verification of the valuation is carried out by:

(a) an appropriate third party which is independent from the counterparty of the derivative, at an adequate frequency and in such a way that the authorised fund manager is able to check it; or

(b) a department within the authorised fund manager which is independent from the department in charge of managing the scheme property and which is adequately equipped for such a purpose.
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

The jurisdictions that fall within COLL 5.2.23R(1)(e) are Australia, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Singapore, Spain, Switzerland, and the United States of America.

For the purposes of COLL 5.2.23 R (2), “fair value” is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.

In respect of its obligations under COLL 6.6.4R (1) (a), the depositary must take reasonable care to ensure that the authorised fund manager has systems and controls that are adequate to ensure compliance with COLL 5.2.23 R (1) to (4).

Valuation of OTC derivatives

(1) For the purposes of COLL 5.2.23 R (2), an authorised fund manager of a UCITS scheme must:

(a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a UCITS scheme to OTC derivatives; and

(b) ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.

(2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the authorised fund manager must comply with the requirements in SYSC 8.1.13 R (Additional requirements for a management company) and COLL 6.6A.4R (5) and (6) (Due diligence requirements of AFMs of UCITS schemes).

(3) The arrangements and procedures referred to in this rule must be:

(a) adequate and proportionate to the nature and complexity of the OTC derivative concerned; and

(b) adequately documented.

[Note: article 51(1) second paragraph of the UCITS Directive and articles 44(2) and 44(4) of the UCITS implementing Directive]
Investment in deposits

A UCITS scheme may invest in deposits only if it:

1. is with an approved bank;
2. is:
   a. repayable on demand; or
   b. has the right to be withdrawn; and
3. matures in no more than 12 months.

Significant influence for ICVCs

1. An ICVC must not acquire transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that body corporate if:
   a. immediately before the acquisition, the aggregate of any such securities held by the ICVC gives the ICVC power to influence significantly the conduct of business of that body corporate; or
   b. the acquisition gives the ICVC that power.
2. For the purpose of (1), an ICVC is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held by it, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

Significant influence for authorised fund managers of AUTs or ACSs

1. An authorised fund manager must not acquire, or cause to be acquired for an AUT or ACS of which it is the authorised fund manager, transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the body corporate if:
(a) immediately before the acquisition, the aggregate of any such securities held for that AUT or ACS, taken together with any such securities already held for other AUTs or ACSs of which it is also the authorised fund manager, gives the authorised fund manager power significantly to influence the conduct of business of that body corporate; or

(b) the acquisition gives the authorised fund manager that power.

(2) For the purpose of (1), an authorised fund manager is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held for all the AUTs or ACSs, of which it is the authorised fund manager, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

Concentration

A UCITS scheme:

(1) must not acquire transferable securities (other than debt securities) which:

   (a) do not carry a right to vote on any matter at a general meeting of the body corporate that issued them; and
   (b) represent more than 10% of those securities issued by that body corporate;

(2) must not acquire more than 10% of the debt securities issued by any single body;

(3) must not acquire more than 25% of the units in a collective investment scheme;

(4) must not acquire more than 10% of the approved money-market instruments issued by any single body; and

(5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant investment cannot be calculated.

UCITS schemes that are umbrellas

In relation to a UCITS scheme which is an umbrella, the provisions in COLL 5.2 to COLL 5.5 apply to each sub-fund as they would for an authorised fund, except the following rules which apply at the level of the umbrella only:

   (a) COLL 5.2.27 R (Significant influence for ICVCs);
   (b) COLL 5.2.28 R (Significant influence for authorised fund managers of AUTs or ACSs); and
   (c) COLL 5.2.29 R (Concentration).
(2) A sub-fund may invest in or dispose of units of another sub-fund of the same umbrella (the second sub-fund) only if the following conditions are satisfied:

(a) the second sub-fund does not hold units in any other sub-fund of the same umbrella;

(b) the conditions in ■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes) are complied with (for the purposes of this rule, ■ COLL 5.2.15 R and ■ COLL 5.2.16 R are to be read as modified by ■ COLL 5.2.15 R (2)); and

(c) the investing or disposing sub-fund must not be a feeder UCITS to the second sub-fund.

Schemes replicating an index

5.2.31 R

(1) Notwithstanding ■ COLL 5.2.11 R (Spread: general), a UCITS scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the investment policy of that scheme as stated in the most recently published prospectus is to replicate the composition of a relevant index which satisfies the criteria specified in ■ COLL 5.2.33 R (Relevant indices).

(1A) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of efficient portfolio management.

[Note: article 12(1) of the UCITS eligible assets Directive]

(2) The limit in (1) can be raised for a particular UCITS scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

Index replication

5.2.32 G

(1) [deleted]

(2) In the case of a UCITS scheme replicating an index under ■ COLL 5.2.31 R (Schemes replicating an index) the scheme property need not consist of the exact composition and weighting of the underlying in the relevant index in cases where the scheme’s investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

Relevant indices

5.2.33 R

(1) The indices referred to in ■ COLL 5.2.31 R are those which satisfy the following criteria:

(a) the composition is sufficiently diversified;

(b) the index represents an adequate benchmark for the market to which it refers; and

(c) the index is published in an appropriate manner.
(2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.

(3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) An index is published in an appropriate manner if:
   (a) it is accessible to the public;
   (b) the index provider is independent from the index-replicating UCITS scheme; this does not preclude index providers and the UCITS scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

[Note: articles 12(2),(3) and (4) of the UCITS eligible assets Directive]

Disclosure requirements in relation to UCITS schemes that employ particular investment strategies

5.2.34 (1) Authorised fund managers of UCITS schemes should bear in mind that where a UCITS scheme employs particular investment strategies such as those in (2), COBS 4.13.2R (Marketing communications relating to UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

(2) Examples of investment strategies that require these additional disclosures include a scheme:
   (a) investing more than 35% in value of its scheme property in transferable securities or approved money-market instruments specified in COLL 5.2.12R (Spread: government and public securities); or
   (b) investing principally in units in collective investment schemes, deposits or derivatives; or
   (c) replicating an index.

Guidance on syndicated loans

5.2.35 (1) A syndicated loan for the purposes of this guidance means a form of loan where a group or syndicate of parties lend money to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders' interest in the loan and arrange or act as a conduit for the interest payments. Whether an interest in a syndicated loan constitutes a transferable security or otherwise will depend on the terms of the relevant instrument. Where an authorised fund manager plans to invest scheme property in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.
(2) To determine whether an interest in a syndicated loan would be an eligible investment for a UCITS scheme in accordance with COLL 5.2, an authorised fund manager should first consider whether it constitutes a transferable security within the meaning of COLL 5.2.7 R (Transferable securities) and COLL 5.2.7AR (which implemented the additional eligibility criteria arising out of the UCITS eligible assets Directive that relate to liquidity, valuations and negotiability).

(3) A UCITS scheme cannot lend money from its scheme property. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a UCITS scheme may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.

(4) An instrument will not be a transferable security if it falls within one or more of the exclusions set out in article 77(2) of the Regulated Activities Order. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.

(5) In the FCA’s opinion, for an instrument to be classed as a debenture for the purposes of constituting a transferable security (see COLL 5.2.7 R (1)(b)), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a debenture for these purposes.

(6) In the FCA’s view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of COLL 5.2.7AR (1)(e) (Investment in transferable securities), so as to make it a permissible investment for a UCITS scheme. When securities are capable of being traded on a capital market, whether on-exchange or off-exchange, as a class and are fungible within their class, this would tend to indicate (unless the AFM was aware of specific evidence to the contrary) that they are negotiable.

(7) The FCA’s understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, AFMs should use similar analysis to determine whether or not interests in such loans are eligible investments for UCITS schemes.

(8) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a UCITS scheme is subject to the spread requirements in COLL 5.2.11 R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.2.8 R (3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the scheme’s overall exposure to such loans will count towards the limit in COLL 5.2.8 R (4).
ESMA guidelines

5.2.36

Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

Guidelines concerning eligible assets for investment by UCITS: The classification of hedge fund indices as financial indices (CESR/07-434)


Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)


Revision of the provisions on diversification of collateral in ESMA’s Guidelines on ETFs and other UCITS issues (ESMA 2014/294).

5.3 Derivative exposure

Application

5.3.1 R
This section applies to an authorised fund manager of a UCITS scheme and to an ICVC which is a UCITS scheme.

Introduction

5.3.2 G
(1) A scheme may invest in derivatives and forward transactions as long as the exposure to which the scheme is committed by that transaction itself is suitably covered from within its scheme property. Exposure will include any initial outlay in respect of that transaction.

(2) Cover ensures that a scheme is not exposed to the risk of loss of property, including money, to an extent greater than the net value of the scheme property. Therefore, a scheme is required to hold scheme property sufficient in value or amount to match the exposure arising from a derivative obligation to which the scheme is committed. This section sets out detailed requirements for cover of a scheme.

(3) In accordance with COLL 5.1.3 R (2)(b) (Treatment of obligations), cover used in respect of one transaction in derivatives or forward transaction should not be used for cover in respect of another transaction in derivatives or a forward transaction.

5.3.3 R
(1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

Cover for investment in derivatives and forward transactions

5.3.3A R
The authorised fund manager of a UCITS scheme must ensure that its global exposure relating to derivatives and forward transactions held in the UCITS scheme does not exceed the net value of the scheme property.

[Note: article 51(3) first paragraph of the UCITS Directive]
Daily calculation of global exposure

5.3.3B  R  An authorised fund manager of a UCITS scheme must calculate its global exposure on at least a daily basis.

[Note: article 41(2) of the UCITS implementing Directive]

5.3.3C  R  For the purposes of this section, exposure must be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

[Note: article 51(3) second paragraph of the UCITS Directive]

Guidance on cover

5.3.4  G  (1) An authorised fund manager should note that the scope of COLL 5.3.3C R is extended in relation to underwriting commitments by COLL 5.5.8 R (General power to accept or underwrite placings).

(2) Property the subject of a transaction under COLL 5.4 (Stock lending) should not be considered as available for cover unless the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

Borrowing

5.3.5  R  (1) Cash obtained from borrowing, and borrowing which the authorised fund manager reasonably regards an eligible institution or an approved bank to be committed to provide, is not available for cover under COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), except if (2) applies.

(2) Where, for the purposes of this section, the ICVC or the depositary for the account of the AUT or ACS on the instructions of the authorised fund manager:

(a) borrows an amount of currency from an eligible institution or an approved bank; and

(b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on deposit with the lender (or his agent or nominee);

then this section applies as if the borrowed currency, and not the deposited currency, were part of the scheme property.

5.3.6  R  (1) [deleted]

(2) [deleted]

Calculation of global exposure

5.3.7  R  An authorised fund manager must calculate the global exposure of any UCITS scheme it manages either as:
(1) the incremental exposure and leverage generated through the use of derivatives and forward transactions (including embedded derivatives as referred to in COLL 5.2.19R (3A) (Derivatives: general)), which may not exceed 100% of the net value of the scheme property; or

(2) the market risk of the scheme property.

[Note: article 41(1) of the UCITS implementing Directive]

5.3.8 R

(1) An authorised fund manager must calculate the global exposure of a UCITS scheme by using:

(a) the commitment approach; or

(b) the value at risk approach.

(2) An authorised fund manager must ensure that the method selected in (1) is appropriate, taking into account:

(a) the investment strategy pursued by the UCITS scheme;

(b) the types and complexities of the derivatives and forward transactions used; and

(c) the proportion of the scheme property comprising derivatives and forward transactions.

(3) Where a UCITS scheme employs techniques and instruments including repo contracts or stock lending transactions in accordance with COLL 5.4 (Stock lending) in order to generate additional leverage or exposure to market risk, the authorised fund manager must take those transactions into consideration when calculating global exposure.

(4) For the purposes of (1), value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.

[Note: articles 41(3) and 41(4) of the UCITS implementing Directive]

Commitment approach

5.3.9 R

Where an authorised fund manager of a UCITS scheme uses the commitment approach for the calculation of global exposure, it must:

(1) ensure that it applies this approach to all derivative and forward transactions (including embedded derivatives as referred to in COLL 5.2.19R (3A) (Derivatives: general)), whether used as part of the scheme's general investment policy, for the purposes of risk reduction or for the purposes of efficient portfolio management in accordance with the rules of this chapter; and

(2) convert each derivative or forward transaction into the market value of an equivalent position in the underlying asset of that derivative or forward (standard commitment approach).

[Note: articles 42(1) and 42(2) first paragraph of the UCITS implementing Directive]
(1) An authorised fund manager of a UCITS scheme may apply other calculation methods which are equivalent to the standard commitment approach.

(2) An authorised fund manager may take account of netting and hedging arrangements when calculating global exposure of a UCITS scheme, where those arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

(3) Where the use of derivatives or forward transactions does not generate incremental exposure for the UCITS scheme, the underlying exposure need not be included in the commitment calculation.

(4) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS scheme in accordance with COLL 5.5.4 R (General power to borrow) need not form part of the global exposure calculation.

[Note: articles 42(2) final paragraph, 42(3), 42(4) and 42(5) of the UCITS implementing Directive]

ESMA guidelines

Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)


Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA 2012/197)


Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)

5.4 Stock lending

Application

5.4.1 (1) Subject to (2), this section applies to an ICVC, the depositary of an authorised fund and an authorised fund manager in any case where the authorised fund is a UCITS scheme or a non-UCITS retail scheme.

(2) This section does not apply in any case where a UCITS scheme or a non-UCITS retail scheme is a regulated money market fund. The Money Market Funds Regulation sets out restrictions in relation to stock lending and repo contracts that apply in relation to regulated money market funds.

5.4.1A COLL 6.6B sets out additional FCA rules applicable to a depositary of a UCITS scheme in relation to the re-use of UCITS custodial assets.

Permitted stock lending

5.4.2 (1) This section covers techniques relating to transferable securities and approved money-market instruments which are used for the purpose of efficient portfolio management. It permits the generation of additional income for the benefit of the authorised fund, and hence for its investors, by entry into stock lending transactions for the account of the authorised fund.

(2) The specific method of stock lending permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers securities to the borrower otherwise than by way of sale and the borrower is to transfer those securities, or securities of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing collateral to the "lender" to cover him against the risk that the future transfer back of the securities may not be satisfactorily completed.

Stock lending: general

5.4.3 (1) An authorised fund may only enter into a stock lending arrangement or repo contract in accordance with the rules in this section if the arrangement or contract is:

(a) for the account of and for the benefit of the scheme; and
(b) in the interests of its unitholders.

(2) An arrangement or contract in (1) is not in the interests of unitholders unless it reasonably appears to the ICVC or authorised fund manager of an authorised fund to be appropriate with a view to generating additional income for the authorised fund with an acceptable degree of risk.

Stock lending: requirements

(1) An ICVC, or the depositary of an authorised fund acting in accordance with the instructions of the authorised fund manager, may enter into a repo contract, or a stock lending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

(a) all the terms of the agreement under which securities are to be reacquired by the depositary for the account of the ICVC, AUT or ACS are in a form which is acceptable to the depositary and are in accordance with good market practice;

(b) the counterparty is:
   (i) an authorised person; or
   (ii) a person authorised by a Home State regulator; or
   (iii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
   (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC derivatives by at least one of the following federal banking supervisory authorities of the United States of America:
      (A) the Office of the Comptroller of the Currency;
      (B) the Federal Deposit Insurance Corporation; and
      (C) the Board of Governors of the Federal Reserve System; and
      (D) [deleted]

(c) high quality and liquid collateral is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the collateral is:
   (i) acceptable to the depositary;
   (ii) adequate; and
   (iii) sufficiently immediate.

(2) The counterparty for the purpose of (1) is the person who is obliged under the agreement referred to in (1)(a) to transfer to the depositary the securities transferred by the depositary under the stock lending arrangement or securities of the same kind.

(3) (1)(c) does not apply to a stock lending transaction made through Euroclear Bank SA/NV’s Securities Lending and Borrowing Programme.
**Stock lending: treatment of collateral**

Where a stock lending arrangement is entered into, the scheme property remains unchanged in terms of value. The securities transferred cease to be part of the scheme property, but there is obtained in return an obligation on the part of the counterparty to transfer back equivalent securities. The depositary will also receive collateral to set against the risk of default in transfer, and that collateral is equally irrelevant to the valuation of the scheme property (because it is transferred against an obligation of equivalent value by way of re-transfer). COLL 5.4.6 accordingly makes provision for the treatment of the collateral in that context.

### Treatment of collateral

1. **Collateral** is adequate for the purposes of this section only if it is:
   - (a) transferred to the depositary or its agent;
   - (aa) for a UCITS scheme, received under a title transfer arrangement;
   - (ab) for a UCITS scheme, at all times equal in value to the market value of the securities transferred by the depositary plus a premium;
   - (b) for a non-UCITS retail scheme, at all times at least equal in value to the value of the securities transferred by the depositary; and
   - (c) for a non-UCITS retail scheme, in the form of one or more of:
     - (i) cash; or
     - (ii) a certificate of deposit; or
     - (iv) a letter of credit; or
     - (v) a readily realisable security; or
     - (vi) commercial paper with no embedded derivative content; or
     - (vii) a qualifying money market fund.

1A. Where the collateral is invested in units in a qualifying money market fund managed or operated by (or, for an ICVC, whose ACD is) the authorised fund manager of the investing scheme or an associate of that authorised fund manager, the conditions in COLL 5.2.16 (Investment in other group schemes) must be complied with whether or not the investing scheme is a UCITS scheme or a non-UCITS retail scheme.

2. **Collateral** is sufficiently immediate for the purposes of this section if:
   - (a) it is transferred before or at the time of the transfer of the securities by the depositary; or
   - (b) the depositary takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the day of the transfer.

3. The depositary must ensure that the value of the collateral at all times meets the requirement of either (1)(ab) or (1)(b), as appropriate.
(4) The duty in (3) may be regarded as satisfied in respect of collateral
the validity of which is about to expire or has expired where the
depository takes reasonable care to determine that sufficient
collateral will again be transferred at the latest by the close of
business on the day of expiry.

(5) Any agreement for transfer at a future date of securities or of
collateral (or of the equivalent of either) under this section may be
regarded, for the purposes of valuation under COLL 6.3 (Valuation
and pricing) or this chapter, as an unconditional agreement for the
sale or transfer of property, whether or not the property is part of
the property of the authorised fund.

(6) Collateral transferred to the depositary is part of the scheme property
for the purposes of the rules in this sourcebook, except in the
following respects:

(a) it does not fall to be included in any valuation for the purposes
of COLL 6.3 or this chapter, because it is offset under (5) by an
obligation to transfer; and

(b) it does not count as scheme property for any purpose of this
chapter other than this section.

(7) Paragraph (5) and (6)(a) do not apply to any valuation of collateral
itself for the purposes of this section.

5.4.6A  As regards the collateral adequacy of a UCITS scheme and restrictions on
collateral that take the form of cash for a UCITS scheme, authorised fund
managers are referred to paragraph 43 of the ESMA Guidelines to
competent authorities and UCITS management companies on ETFs and other
UCITS issues (ESMA 2012/832)

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Revision of the provisions on diversification of collateral in ESMA’s Guidelines
on ETFs and other UCITS issues (ESMA 2014/294)

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Product by value

5.4.7  There is no limit on the value of the scheme property which may be the
subject of repo contracts or stock lending transactions within this section.

5.4.8  Guidance relating to the use of cash collateral

(1) The use of stock lending or the reinvestment of cash collateral should
not result in a change of the scheme’s declared investment objectives
or add substantial supplementary risks to the scheme’s risk profile.

(2) Collateral taking the form of cash may only be invested in:

(a) one of the investments coming within COLL 5.4.6 R (1) (c) (iii) to
■ (vii) (Treatment of collateral); or

(b) deposits, provided they:
(i) are capable of being withdrawn within five business days, or such shorter time as may be dictated by the stock lending agreement; and

(ii) satisfy the requirements of COLL 5.2.26 R (1) (Investment in deposits).

Where a scheme generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the scheme's global exposure.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 11 of the UCITS eligible assets Directive (part)]

Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA 2012/832)


Revision of the provisions on diversification of collateral in ESMA’s Guidelines on ETFs and other UCITS issues (ESMA 2014/294)

5.5 Cash, borrowing, lending and other provisions

Application

(1) Subject to (2), this section applies to an ICVC, an ACD, an authorised fund manager of an AUT or ACS, and a depositary of an ICVC, AUT or ACS, where such ICVC, AUT or ACS is a UCITS scheme as set out in COLL 5.5.2R (Table of application).

(2) Other than COLL 5.5.3R and COLL 5.5.9R, this section does not apply to an ICVC, an ACD, an authorised fund manager of an AUT or ACS, or a depositary of an ICVC, AUT or ACS, where such ICVC, AUT or ACS is a regulated money market fund.

Table of application

This table belongs to COLL 5.5.1 R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC</th>
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Note: x means "applies"
Cash and near cash

(1) Cash and near cash must not be retained in the scheme property except to the extent that this may reasonably be regarded as necessary in order to enable:
   (a) the pursuit of the scheme's investment objectives; or
   (b) redemption of units; or
   (c) efficient management of the authorised fund in accordance with its investment objectives; or
   (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the authorised fund.

(2) During the period of the initial offer the scheme property may consist of cash and near cash without limitation.

General power to borrow

(1) The ICVC or depositary of an AUT or ACS (on the instructions of the authorised fund manager) may, in accordance with this rule and COLL 5.5.5 R (Borrowing limits), borrow money for the use of the authorised fund on terms that the borrowing is to be repayable out of the scheme property.

(2) Paragraph (1) is subject to the obligation of the authorised fund to comply with any restriction in the instrument constituting the fund.

(3) The ICVC or depositary of an AUT or ACS may borrow under (1) only from an eligible institution or an approved bank.

(4) The authorised fund manager must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the authorised fund manager must have regard in particular to:
   (a) the duration of any period of borrowing; and
   (b) the number of occasions on which resort is had to borrowing in any period.

(5) In addition to complying with (4), the authorised fund manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the depositary.

(6) The depositary may only give its consent as required under (5) on such conditions as appear to the depositary appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

(7) This rule does not apply to "back to back" borrowing under COLL 5.3.5 R (2) (Borrowing).

(8) An ICVC must not issue any debenture unless it acknowledges or creates a borrowing that complies with (1) to (6)
### Borrowing limits

5.5.5 R

1. The **authorised fund manager** must ensure that the **authorised fund's** borrowing does not, on any day, exceed 10% of the value of the **scheme property**.

2. This **rule** does not apply to "back to back" borrowing under COLL 5.3.5 R (2)(Borrowing).

3. In this **rule**, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of **derivatives**) designed to achieve a temporary injection of **money** into the **scheme property** in the expectation that the sum will be repaid.

4. [deleted]

5.5.5A G

An **authorised fund manager** should ensure when calculating the **authorised fund's** borrowing for COLL 5.5.5R(1) that:

1. the figure calculated is the total of all borrowing in all currencies by the **authorised fund**; and

2. long and short positions in different currencies are not netted off against each other.

### Restrictions on lending of money

5.5.6 R

1. None of the **money** in the **scheme property** of an **authorised fund** may be lent and, for the purposes of this prohibition, **money** is lent by an **authorised fund** if it is paid to a **person** ("the payee") on the basis that it should be repaid, whether or not by the payee.

2. Acquiring a **debenture** is not lending for the purposes of (1); nor is the placing of **money** on deposit or in a current account.

3. Paragraph (1) does not prevent an **ICVC** from providing an **officer** of the **ICVC** with funds to meet expenditure to be incurred by him for the purposes of the **ICVC** (or for the purposes of enabling him properly to perform his duties as an **officer** of the **ICVC**) or from doing anything to enable an **officer** to avoid incurring such expenditure.

### Restrictions on lending of property other than money

5.5.7 R

1. The **scheme property** of an **authorised fund** other than **money** must not be lent by way of deposit or otherwise.

2. Transactions permitted by COLL 5.4 (Stock lending) are not to be regarded as lending for the purposes of (1).

3. The **scheme property** must not be mortgaged.

4. Where transactions in **derivatives** or forward transactions are used for the account of the **authorised fund** in accordance with any of the **rules** in this chapter, nothing in this **rule** prevents the **ICVC** or the
depositary at the request of the ICVC, or the depositary of an AUT or ACS at the request of the authorised fund manager, from:

(a) lending, depositing, pledging or charging scheme property for margin requirements; or

(b) transferring scheme property under the terms of an agreement in relation to margin requirements, provided that the authorised fund manager reasonably considers that both the agreement and the margin arrangements made under it (including in relation to the level of margin) provide appropriate protection to unitholders.

An agreement providing appropriate protection to unitholders for the purposes of COLL 5.5.7 R (4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

General power to accept or underwrite placings

(1) Any power in this chapter to invest in transferable securities may be used for the purpose of entering into transactions to which this rule applies, subject to compliance with any restriction in the instrument constituting the fund.

(2) This rule applies to any agreement or understanding which:

(a) is an underwriting or sub-underwriting agreement; or

(b) contemplates that securities will or may be issued or subscribed for or acquired for the account of the authorised fund.

(3) Paragraph (2) does not apply to:

(a) an option; or

(b) a purchase of a transferable security which confers a right to:

(i) subscribe for or acquire a transferable security; or

(ii) convert one transferable security into another.

(4) The exposure of an authorised fund to agreements and understandings within (2) must, on any day, be:

(a) covered under COLL 5.3.3A R (Cover for investment in derivatives and forward transactions); and

(b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

Guarantees and indemnities

(1) An ICVC or a depositary for the account of an authorised fund must not provide any guarantee or indemnity in respect of the obligation of any person.
(2) None of the *scheme property* of an *authorised fund* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.

(3) Paragraphs (1) and (2) do not apply to:

(a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter; and

(b) for an *ICVC*:

(i) an indemnity falling within the provisions of regulation 62(3) of the *OEIC Regulations* (Exemptions from liability to be void);

(ii) an indemnity (other than any provision in it which is void under regulation 62 of the *OEIC Regulations*) given to the *depository* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and

(iii) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *ICVC* and the *holders of units* in that *scheme* become the first *unitholders* in the *ICVC*; and

(c) for an *AUT* or *ACS*, an indemnity given to a *person* winding up a body corporate or other *scheme* in circumstances where those assets are becoming part of the *scheme property* by way of a *unitisation*.

**Guidance on restricting payments**

5.5.10  [G]

[COLL 6.7.15 R (Payment of liabilities on transfer of assets)] and [COLL 6.7.4 R (Payments out of scheme property)] contain provisions restricting payments out of *scheme property*.  

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5.6 Investment powers and borrowing limits for non-UCITS retail schemes

Application

5.6.1 (1) Subject to (3), this section applies to the authorised fund manager and the depositary of a non-UCITS retail scheme and to an ICVC which is a non-UCITS retail scheme.

(2) Where this section contains a reference to a rule in any of §COLL 5.1 to §COLL 5.5, these rules and any rules to which they refer or any relevant guidance should be read as if any reference to a UCITS scheme is to a non-UCITS retail scheme.

(3) Other than §COLL 5.6.3R(1), §5.6.4AG, §5.6.14R, §5.6.15R, §5.6.22R(2), §5.6.22R(3), §5.6.22R(9) and §5.6.24R, this section does not apply where the non-UCITS retail scheme in question is a regulated money market fund.

Explanation of §COLL 5.6

5.6.2 (1) This section contains rules on the types of permitted investments and any relevant limits with which non-UCITS retail schemes must comply. These rules allow for the relaxation of certain investment and borrowing powers from the requirements applicable to UCITS schemes.

(2) Some examples of the different investment and borrowing powers under the rules in this section for non-UCITS retail schemes are the power to:

(a) invest not more than 10% of the value of scheme property in transferable securities or money-market instruments issued by any single body;

(b) invest in up to 20% in aggregate of the value of the scheme property in transferable securities which are not approved securities and unregulated schemes;

(c) invest in a wider range of alternative investment funds;

(d) include gold in the scheme property (up to a limit of 10% of the value of the scheme property);

(e) include immovables in the scheme property; and

(f) borrow on a non-temporary basis without any specific time limit as to repayment of the borrowing.
Prudent spread of risk

(1) An authorised fund manager must ensure that, taking account of the investment objectives and policy of the non-UCITS retail scheme as stated in its most recently published prospectus, the scheme property of the non-UCITS retail scheme aims to provide a prudent spread of risk.

(1A) For a feeder NURS, (1) applies only to the extent that the feeder NURS invests in assets other than units of its qualifying master scheme.

(2) Subject to (3) and (4), the rules in this section relating to spread of investments, including immovables, do not apply until 12 months after the later of:
   (a) the date when the authorisation order in respect of the non-UCITS retail scheme takes effect; and
   (b) the date the initial offer commenced;
   provided that (1) is complied with during such period.

(3) Subject to (4), the limits in COLL 5.6.19 R do not apply until 24 months after the later of:
   (a) the date when the authorisation order in respect of the non-UCITS retail scheme takes effect; and
   (b) the date the initial offer commenced;
   provided that (1) is complied with during such period.

(4) The limit in COLL 5.6.19 R (7) relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the authorisation order in respect of the non-UCITS retail scheme takes effect and the date the initial offer period commenced.

Investment powers: general

(1) The scheme property of a non-UCITS retail scheme may, subject to the rules in this section, comprise any assets or investments to which it is dedicated.

(2) For an ICVC, the scheme property may also include movable or immovable property that is necessary for the direct pursuit of the ICVC’s business of investing in those assets or investments.

(3) The scheme property must be invested only in accordance with the relevant provisions in this section that are applicable to that non-UCITS retail scheme and within any upper limit specified in this section.
The instrument constituting the fund may restrict the investment powers of a scheme further than the relevant restrictions in this section.

The scheme property may only, except where otherwise provided in the rules in this section, consist of any one or more of:

(a) transferable securities;

(b) money-market instruments;

(c) units in collective investment schemes permitted under COLL 5.6.10 R (Investment in collective investment schemes);

(d) derivatives and forward transactions permitted under COLL 5.6.13 R (Permitted transactions (derivatives and forwards));

(e) deposits permitted under COLL 5.2.26 R (Investment in deposits);

(f) immovables permitted under COLL 5.6.18 R (Investment in property) to COLL 5.6.19 R (Investment limits for immovables); and

(g) gold up to a limit of 10% in value of the scheme property.

Transferable securities and money-market instruments held within a non-UCITS retail scheme must:

(1) (a) be admitted to or dealt in on an eligible market within COLL 5.2.10 R (Eligible markets: requirements); or

(b) be recently issued transferable securities which satisfy the requirements for investment by a UCITS scheme set out in COLL 5.2.8 R (3)(e); or

(c) be approved money-market instruments not admitted to or dealt in on an eligible market which satisfy the requirements for investment by a UCITS scheme set out in COLL 5.2.10A R to COLL 5.2.10C R; or

(2) subject to a limit of 20% in value of the scheme property be:

(a) transferable securities which are not within (1); or
(b) money-market instruments which are liquid and have a value which can be determined accurately at any time.

5.6.5A  Transferable securities held within a non-UCITS retail scheme must also satisfy the criteria in ■ COLL 5.2.7A R, ■ COLL 5.2.7C R and ■ COLL 5.2.7E R for the purposes of investment by a UCITS scheme.

5.6.5B  ■ COLL 5.2.7A R to ■ COLL 5.2.7E R contain rules and guidance relating to the criteria that need to be satisfied for the purposes of investment in transferable securities.

5.6.5C  [deleted]

5.6.5D  [deleted]

Funds investing in inherently illiquid assets (FIIA)

5.6.5E  (1) The Glossary definition of a fund investing in inherently illiquid assets (or FIIA) includes conditions relating to, amongst other things, the investment objectives of such non-UCITS retail schemes and the proportion of scheme property which is invested in inherently illiquid assets.

(2) Examples of such assets include:
(a) property and real estate;
(b) shares in a special purpose vehicle investing in infrastructure projects;
(c) shares issued by a company that are not listed or admitted to trading; and
(d) units in a property authorised investment fund.

Valuation

5.6.6  In this section the value of the scheme property means the value of the scheme property determined in accordance with ■ COLL 5.2.5 R (Valuation).

Spread: general

5.6.7  (1) This rule does not apply in respect of a transferable security or an approved money-market instrument to which ■ COLL 5.6.8R (Spread: government and public securities) applies.

(2) Not more than 20% in value of the scheme property is to consist of deposits with a single body.

(3) Not more than 10% in value of the scheme property is to consist of transferable securities or money-market instruments issued by any single body subject to ■ COLL 5.6.23 R (Schemes replicating an index).
(3A) The limit of 10% in (3) is raised to 25% in value of the scheme property in respect of covered bonds.

(4) In applying (3) certificates representing certain securities are to be treated as equivalent to the underlying security.

(5) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.

(6) Except for a feeder NURS or a scheme dedicated to units in a single property authorised investment fund, not more than 35% in value of the scheme is to consist of the units of any one scheme.

(6A) Schemes which (in respect of investment in units in collective investment schemes) are dedicated to units in a single property authorised investment fund or qualifying master scheme must, in addition to the investment in the property authorised investment fund or qualifying master scheme, only hold cash or near cash to maintain sufficient liquidity to enable the scheme to meet its commitments, such as redemptions. Schemes may also use techniques and instruments for the purpose of efficient portfolio management, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

(7) For the purpose of calculating the limit in (5), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (8).

(8) The conditions referred to in (7) are that the collateral:

(a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;

(b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;

(c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and

(d) can be fully enforced by the non-UCITS retail scheme at any time.

(9) For the purpose of calculating the limit in (5), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:

(a) comply with the conditions set out in Part Three, Title II, Chapter 6, Section 7(Contractual netting (Contracts for novation and other netting agreements)) of the UK CRR and

(b) are based on legally binding agreements.

(10) In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:

(a) it is backed by an appropriate performance guarantee; and

(b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.
(11) For the purposes of this rule a single body is:
   (a) in relation to transferable securities and money market instruments, the person by whom they are issued; and
   (b) in relation to deposits, the person with whom they are placed.

Guidance on spread: general

(1) COL 5.6.7 R (7) to (10) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable non-UCITS retail schemes to benefit from the same flexibility.

(2) The attention of authorised fund managers is specifically drawn to condition (d) in COL 5.6.7 R (8) under which the collateral has to be legally enforceable at any time. It is the FCA’s view that it is advisable for an authorised fund manager to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The depositary will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COL 6.6.4 R (General duties of the depositary).

(3) In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it on behalf of the scheme.

Spread: government and public securities

(1) This rule applies in respect of a transferable security or an approved money-market instrument (“such securities”) that is issued or guaranteed by:
   (a) the UK or an EEA State; or
   (b) a local authority of the UK or an EEA State; or
   (c) a non-EEA State; or
   (d) a public international body to which the UK or one or more EEA States belong.

(2) The requirements in COL 5.2.12 R (Spread: government and public securities) apply to investment in such securities by a non-UCITS retail scheme, except for COL 5.2.12R(3)(d), which applies to such a scheme only to the extent that it concerns the most recently published prospectus of the scheme.

Investment in nil and partly paid securities

A non-UCITS retail scheme must not invest in nil and partly paid securities unless the investment complies with the conditions in COL 5.2.17 R (Investment in nil and partly paid securities).
**Investment in collective investment schemes**

### 5.6.10 R

**A non-UCITS retail scheme**, except for a feeder NURS (which must instead comply with ❯ COLL 5.6.26 R), must not invest in units in a collective investment scheme (second scheme) unless the second scheme meets each of the requirements at (1) to (5):

1. **the second scheme:**
   - (a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or
   - (b) is a non-UCITS retail scheme; or
   - (c) is a recognised scheme; or
   - (d) is constituted outside the United Kingdom and the investment and borrowing powers of which are the same or more restrictive than those of a non-UCITS retail scheme; or
   - (e) is a scheme not falling within (a) to (d) and in respect of which no more than 20% in value of the scheme property (including any transferable securities which are not approved securities) is invested;

2. **the second scheme** operates on the principle of the prudent spread of risk;

3. **the second scheme** is prohibited from having more than 15% in value of the property of that scheme consisting of units in collective investment schemes (unless ❯ COLL 5.6.10AR applies);

4. **the participants** in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:
   - (a) related to the net value of the property to which the units relate; and
   - (b) determined in accordance with the scheme; and

5. where the second scheme is an umbrella, the provisions in (2) to (4) and ❯ COLL 5.6.7 R (Spread: general) apply to each sub-fund as if it were a separate scheme.

### Investment in feeder schemes

### 5.6.10A R

1. **A non-UCITS retail scheme** that is not a feeder NURS may, if the conditions in (2) to (5) are met, invest in units of:
   - (a) a feeder UCITS; or
   - (b) a feeder NURS; or
   - (c) a scheme dedicated to units in a single property authorised investment fund; or
   - (d) a scheme dedicated to units in a recognised scheme.

2. **(a)** The relevant master UCITS must comply with ❯ COLL 5.2.13R(2), (3) and (4) as if it were the second scheme for the purpose of that rule.
(b) The relevant qualifying master scheme, property authorised investment fund or recognised scheme must comply with [COLL 5.6.10R(2) to (5)] as if it were the second scheme for the purpose of that rule.

(3) Not more than 35% in value of the scheme property of the non-UCITS retail scheme may consist of units of one or more schemes permitted under (1)(a) to (d).

(4) The non-UCITS retail scheme must not invest directly in units of the relevant master UCITS, qualifying master scheme, property authorised investment fund or recognised scheme.

(5) The authorised fund manager of the non-UCITS retail scheme must be able to show on reasonable grounds that an investment in one or more schemes permitted under (1)(a) to (d) is:

(a) in the interests of investors; and

(b) no less advantageous than if the non-UCITS retail scheme had held units directly in the relevant:

(i) master UCITS; or

(ii) qualifying master scheme; or

(iii) property authorised investment fund; or

(iv) recognised scheme.

When determining whether an investment is no less advantageous for [COLL 5.6.10AR(5)(b)], an authorised fund manager should have regard in particular to:

(1) the risk profile of the non-UCITS retail scheme;

(2) the total costs borne by the non-UCITS retail scheme; and

(3) the benefits to investors of investing in units of one or more schemes permitted under [COLL 5.6.10AR (1)(a) to (d)].

A non-UCITS retail scheme that is a feeder NURS is required to comply with [COLL 5.6.26R instead of [COLL 5.6.10AR].

Investment in associated collective investment schemes

(1) Units in a scheme do not fall within [COLL 5.6.10 R] if that scheme is managed or operated by (or, if it is an ICVC, has as its ACD) the authorised fund manager of the investing non-UCITS retail scheme or by an associate of that authorised fund manager, unless:

(a) the prospectus of the investing authorised fund clearly states that the property of that investing fund may include such units; and

(b) the conditions in [COLL 5.2.16 R] (Investment in other group schemes) are complied with.
(2) Where a sub-fund of a non-UCITS retail scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:

(a) COLL 5.6.11 R (1)(a) is modified as follows - the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and

(b) COLL 5.6.11 R (1)(b) is modified as follows - COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "UCITS scheme" are taken to be references to the investing or disposing sub-fund and references to the "second scheme" are taken to be references to the second sub-fund.

Derivatives: general

(1) A transaction in derivatives or a forward transaction must not be effected for a non-UCITS retail scheme unless the transaction is:

(a) of a kind specified in COLL 5.6.13 R (Permitted transactions (derivatives and forwards)); and

(b) covered, as required by COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).

(2) Where a scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in COLL 5.6.7 R (Spread: general) and COLL 5.6.8 R (Spread: government and public securities) except as provided in (4).

(3) Where a transferable security or money-market instrument embeds a derivative, this must be taken into account for the purposes of calculating any limit in this section.

(4) Where a scheme invests in an index-based derivative, provided the relevant index falls within COLL 5.6.23 R (Schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of COLL 5.6.7 R and COLL 5.6.8 R.

(5) The relaxation in (4) is subject to the authorised fund manager taking account of COLL 5.6.3 R (Prudent spread of risk).

Permitted transactions (derivatives and forwards)

(1) A transaction in a derivative must be within COLL 5.2.20 R (1) (Permitted transactions (derivatives and forwards)) and:

(a) the underlying must be within COLL 5.6.4 R (5) (Investment powers: general) or COLL 5.2.20R (2)(f) to (i); and

(b) the exposure to the underlying must not exceed the limits in COLL 5.6.7 R (Spread: general), COLL 5.6.8 R (Spread: government and public securities) and COLL 5.6.5 R (2).

(2) A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.
(3) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the instrument constituting the fund and the most recently published prospectus.

(4) A transaction in a derivative must not be effected if the intended effect is to create the potential for an uncovered sale of:

(a) transferable securities;
(b) money-market instruments;
(c) units in collective investment schemes; or
(d) derivatives.

(5) Any forward transaction must be made with an eligible institution or an approved bank.

(6) The authorised fund manager must ensure compliance with:
- COLL 5.3.3A R (Cover for investment in derivatives and forward transactions),
- COLL 5.3.3B R and
- COLL 5.3.3C R (Daily calculation of global exposure).

Transactions for the purchase or disposal of property

The requirements of COLL 5.2.21 R (Transactions for the purchase of property) and COLL 5.2.22 R (Requirement to cover sales) apply to non-UCITS retail schemes in the same manner as to UCITS schemes.

OTC transactions in derivatives

Any transaction in an OTC derivative under COLL 5.6.13 R (Permitted transactions (derivatives and forwards)) must comply with the requirements of COLL 5.2.23 R (OTC transactions in derivatives).

Risk management

An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated with a non-UCITS retail scheme’s positions and their contribution to the overall risk profile of the scheme.

Risk management process

(1) The risk management process should take account of the investment objectives and policy of the non-UCITS retail scheme as stated in its most recent prospectus.

(2) The depositary should take reasonable care to review the appropriateness of the risk management process in line with its duties under COLL 6.6.4 R (General duties of the depositary) and COLL 6.6.14 R (Duties of the depositary and authorised fund manager: investment and borrowing powers), as appropriate.

(3) An authorised fund manager is expected to demonstrate more sophistication in its risk management process for a non-UCITS retail scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take...
account of any characteristic of non-linear dependence in the value of a position to its underlying.

(4) An authorised fund manager should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

(5) The risk management process should enable the analysis required by COLL 5.6.16 R (Risk management) to be undertaken at least daily or at each valuation point whichever is the more frequent.

Investment in property

(1) Any investment in land or a building held within the scheme property of a non-UCITS retail scheme must be an immovable within (2) to (5).

(2) An immovable must:
   (a) be situated in a country or territory identified in the prospectus for the purpose of this rule; and
   (b) if situated in:
      (i) England and Wales or Northern Ireland, be a freehold or leasehold interest; or
      (ii) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
   (c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the scheme and provides as good a title as any of the interests in (b)(i) or (ii).

(3) The authorised fund manager must have taken reasonable care to determine that the title to the immovable is a good marketable title.

(4) The authorised fund manager of an AUT or ACS or the ICVC must:
   (a) have received a report from an appropriate valuer which:
      (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
      (ii) states that in the appropriate valuer’s opinion the immovable would, if acquired by the scheme, be capable of being disposed of reasonably quickly at that valuation; or
   (b) have received a report from an appropriate valuer as required by (4)(a)(i) and stating that:
      (i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property or is another legal interest as defined in (2)(b) or (c) in an immovable which is already included in the scheme property; and
      (ii) in the opinion of the appropriate valuer, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.

(5) An immovable must:
(a) be bought or be agreed by enforceable contract to be bought within six months after receipt of the report of the appropriate valuer under (4);

(b) not be bought, if it is apparent to the authorised fund manager that the report in (a) could no longer reasonably be relied upon; and

(c) not be bought at more than 105% of the valuation for the relevant immovable in the report in (4).

(6) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.

(7) An appropriate valuer must be a person who:

(a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;

(b) is qualified to be a standing independent valuer of a non-UCITS retail scheme or is considered by the scheme's standing independent valuer to hold an equivalent qualification;

(c) is independent of the ICVC, the depositary and each of the directors of the ICVC or of the authorised fund manager and depositary of the AUT or ACS; and

(d) has not engaged himself or any of his associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

Investment in overseas property through an intermediate holding vehicle

(1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in that immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

(1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle’s reasonable running costs (including tax).

(2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme’s investment objectives and policy.

(3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.

(4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.

(5) The authorised fund manager should provide sufficient information to enable the depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.

Investment limits for immovables

The following limits apply in respect of immovables held as part of scheme property of a scheme:

(1) not more than 15% in value of the scheme property is to consist of any one immovable;

(2) in (1), immovables within COLL 5.6.18 R (4) (Investment in property) must be regarded as one immovable;

(3) the figure of 15% in (1) may be increased to 25% once the immovable has been included in the scheme property in compliance with (1);

(4) the income receivable from any one group in any accounting period must not be attributable to immovables comprising;
   (a) more than 25%; or
   (b) in the case of a government or public body more than 35%;
       of the value of the scheme property;

(5) not more than 20% in value of the scheme property is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in COLL 5.6.18 R (4) (on the assumption the immovable is not mortgaged);

(6) the aggregate value of:
   (a) mortgages secured on immovables under (5);
   (b) borrowing of the scheme under COLL 5.6.22 R (5); and
   (c) any transferable securities that are not approved securities;
       must not at any time exceed 20% of the value of the scheme property;
not more than 50% in value of the scheme property is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and

no option may be granted to a third party to buy any immovable comprised in the scheme property unless the value of the relevant immovable does not exceed 20% of the value of the scheme property together with, where appropriate, the value of investments in:

(a) unregulated collective investment schemes; and

(b) any transferable securities which are not approved securities.

Standing independent valuer and valuation

(1) The following requirements apply in relation to the appointment of a valuer:

(a) the authorised fund manager must ensure that any immovables in the scheme property are valued by an appropriate valuer (standing independent valuer) appointed by the authorised fund manager; and

(b) the appointment must be made with the approval of the depositary at the outset and upon any vacancy.

(2) The standing independent valuer in (1) must be:

(a) for an AUT or ACS, independent of the authorised fund manager and depositary; and

(b) for an ICVC, independent of the ICVC, the directors and the depositary.

(3) The following requirements apply in relation to the functions of the standing independent valuer:

(a) the authorised fund manager must ensure that the standing independent valuer values all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;

(b) for the purposes of (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;

(c) the authorised fund manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;

(d) if either the authorised fund manager or the depositary becomes aware of any matters that appear likely to:

(i) affect the outcome of a valuation of an immovable; or

(ii) cause the valuer to decide to value under (a) instead of under (c);

it must immediately inform the standing independent valuer of that matter;
(e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that person becoming aware of any matter within (d); and

(f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA of the RICS Valuation – Global Standards 2017, UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to COLL 6.3 (Valuation and pricing).

(4) In relation to an immovable:

(a) any valuation under COLL 6.3 (Valuation and pricing) has effect, until the next valuation under that rule, for the purposes of the value of immovables; and

(b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

5.6.20A  G  In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of COLL 5.6.20 R (3) (f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

**Stock lending**

5.6.21  R  A *non-UCITS retail scheme* may undertake *stock lending* in accordance with COLL 5.4 (Stock lending).

**Cash, borrowing, lending and other provisions**

5.6.22  R  The following rules in Chapter 5 apply to a *non-UCITS retail scheme*:

1. COLL 5.2.7 R (Transferable securities);
2. COLL 5.5.1 R (Application) and COLL 5.5.2 R (Table of application);
3. COLL 5.5.3 R (Cash and near cash);
4. COLL 5.5.4 R (1), COLL 5.5.4 R (2), COLL 5.5.4 R (3) and COLL 5.5.4 R (8) (General power to borrow);
5. COLL 5.5.5 R (1) and COLL 5.5.5 R (2) (Borrowing limits);
6. COLL 5.5.6 R (Restrictions on lending of money);
7. COLL 5.5.7 R (1), (2) and (4) (Restrictions on lending of property other than money);
(8) COLL 5.5.8 R (General power to accept or underwrite placings); and

(9) COLL 5.5.9 R (Guarantees and indemnities).

**Schemes replicating an index**

5.6.23 R

1. A non-UCITS retail scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the aim of the investment policy of that scheme as stated in its most recently published prospectus is to replicate the performance or composition of an index within (2).

2. The index must:
   a. have a sufficiently diversified composition;
   b. be a representative benchmark for the market to which it refers; and
   c. be published in an appropriate manner.

3. The limit in (1) may be raised for a particular scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

5.6.23A G

1. Replication of the composition of an index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments for the purpose of efficient portfolio management.

2. The composition of an index is sufficiently diversified if its components adhere to the spread requirements in this section.

3. An index is a representative benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

4. An index is published in an appropriate manner if:
   a. it is accessible to the public;
   b. the index provider is independent from the index-replicating scheme; this does not preclude index providers and the scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

**Non-UCITS retail schemes that are umbrellas**

5.6.24 R

1. In relation to a scheme which is an umbrella, the provisions in this section apply to each sub-fund as they would for a non-UCITS retail scheme.

2. A sub-fund may invest in or dispose of units of another sub-fund of the same umbrella (the second sub-fund) only if the following conditions are satisfied:
   a. the second sub-fund does not hold units in any other sub-fund of the same umbrella;
(b) the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) and ■ COLL 5.6.11 R (Investment in associated collective investment schemes) are complied with (for the purposes of this rule, ■ COLL 5.2.16 R and ■ COLL 5.6.11 R are to be read as modified by ■ COLL 5.6.11 R (2));

(c) not more than 35% in value of the investing or disposing sub-fund is to consist of units of the second sub-fund; and

(d) the investing or disposing sub-fund must not be a feeder NURS to the second sub-fund.

Guidance on syndicated loans

(1) ■ COLL 5.2.35 G (Guidance on syndicated loans) is equally applicable to investment by a non-UCITS retail scheme in a syndicated loan.

(2) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a non-UCITS retail scheme is subject to the spread requirements in ■ COLL 5.6.7 R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of ■ COLL 5.6.5 R (1) (Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme), the scheme’s overall exposure to such loans will count towards the limit in ■ COLL 5.6.5 R (2).

Qualifying collective investment schemes for feeder NURS

The authorised fund manager of a feeder NURS must ensure that the feeder NURS does not invest in the qualifying master scheme, unless the qualifying master scheme meets meets the requirements in (1) to (3):

(1) the qualifying master scheme:
   (a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or
   (b) is a recognised scheme; or
   (c) is a non-UCITS retail scheme;

(2) where the qualifying master scheme is an umbrella, the provisions in ■ COLL 5.6.7 R (Spread: general) apply to each sub-fund as if it were a separate scheme; and

() the qualifying master scheme:
   (a) is not:
      (i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or
      (ii) a feeder NURS; or
      (iii) otherwise dedicated to units in a single collective investment scheme; and
   (b) does not hold units in:
(i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or

(ii) a feeder NURS; or

(iii) a scheme otherwise dedicated to units in a single collective investment scheme.

5.6.27 R An EEA UCITS scheme that is not a recognised scheme is not a qualifying master scheme for COLL 5.6.26R(3) for a pension feeder fund that is a feeder NURS.
5.7 Investment powers and borrowing limits for NURS operating as FAIFs

Application

5.7.1 (1) This section applies to the authorised fund manager and the depositary of a non-UCITS retail scheme operating as a FAIF and to an ICVC which is a non-UCITS retail scheme operating as a FAIF.

(2) Where this section refers to:

(a) a rule or guidance in COLL 5.1 to COLL 5.6, these rules and guidance, and any rules and guidance to which they refer, must be read as if a reference to a UCITS scheme or non-UCITS retail scheme were a reference to a non-UCITS retail scheme operating as a FAIF;

(b) a second scheme, and the second scheme is a feeder scheme which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which the feeder scheme's master scheme invests; and

(c) a second scheme, and the second scheme is a master scheme to which (in respect of investment in units in collective investment schemes) the relevant non-UCITS retail scheme operating as a FAIF is dedicated, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which that master scheme invests.

Purpose

5.7.2 (1) This section contains rules on the types of permitted investments and any relevant limits with which non-UCITS retail schemes operating as FAIFs must comply. These rules allow for the relaxation of certain investment and borrowing powers from the requirements for non-UCITS retail schemes under COLL 5.6.

(2) One example of the different investment and borrowing powers under the rules in this section for non-UCITS retail schemes operating as FAIFs is the power to invest up to 100% of the value of the scheme property in schemes to which COLL 5.7.7 R (Investment in collective investment schemes) applies.

(3) In order to ensure adequate unitholder protection, the authorised fund manager is required to implement certain due diligence procedures in respect of investment in second schemes.
Applicable rules in COLL 5.6

The following rules and guidance in COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) apply to the authorised fund manager and the depositary of a non-UCITS retail scheme operating as a FAIF and to an ICVC which is a non-UCITS retail scheme operating as a FAIF:

1. COLL 5.6.3 R;
2. COLL 5.6.5 R to 5.6.6 R;
3. COLL 5.6.8 R to 5.6.9 R; and
4. COLL 5.6.11 R to 5.6.24 R.

Investment powers: general

1. The scheme property of a non-UCITS retail scheme operating as a FAIF may, subject to the rules in this section, comprise any assets or investments to which it is dedicated.
2. For an ICVC, the scheme property may also include movable or immovable property that is necessary for the direct pursuit of the ICVC’s business of investing in those assets or investments.
3. The scheme property must be invested only in accordance with the relevant provisions in this section that are applicable to that non-UCITS retail scheme operating as a FAIF and within any upper limit specified in this section.
4. The instrument constituting the fund may restrict the investment powers of a scheme further than the relevant restrictions in this section.
5. The scheme property may only, except where otherwise provided in the rules in this section, consist of any one or more of:
   a. transferable securities;
   b. money market instruments;
   c. units in collective investment schemes permitted under COLL 5.7.7 R (Investment in collective investment schemes);
   d. derivatives and forward transactions permitted under COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
   e. deposits permitted under COLL 5.2.26 R (Investment in deposits);
   f. immovables permitted under COLL 5.6.18 R (Investment in property) to COLL 5.6.19 R (Investment limits for immovables); and
   g. gold up to a limit of 10% in value of the scheme property.

Spread: general

1. This rule does not apply in respect of a transferable security or an approved money-market instrument to which COLL 5.6.8 R (Spread: government and public securities) applies.
(2) Not more than 20% in value of the scheme property is to consist of deposits with a single body.

(3) Not more than 10% in value of the scheme property is to consist of transferable securities or approved money-market instruments issued by any single body subject to COLL 5.6.23 R (Schemes replicating an index).

(4) The limit of 10% in (3) is raised to 25% in value of the scheme property in respect of covered bonds.

(5) In applying (3) certificates representing certain securities are to be treated as equivalent to the underlying security.

(6) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.

(7) Except for a feeder scheme which (in respect of investment in units in collective investment schemes) is dedicated to the units of a master scheme, not more than 35% in value of the scheme is to consist of the units of any one scheme.

(8) For the purpose of calculating the limit in (6), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (9).

(9) The conditions referred to in (8) are that the collateral:

(a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
(b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
(c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
(d) can be fully enforced by the non-UCITS retail scheme operating as a FAIF at any time.

(10) For the purpose of calculating the limit in (6), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:

(a) comply with the conditions set out in Part Three, Title II, Chapter 6, Section 7(Contractual netting (Contracts for novation and other netting agreements)) of the UK CRR and
(b) are based on legally binding agreements.

(11) In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:

(a) it is backed by an appropriate performance guarantee; and
(b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.

(12) For the purposes of this rule a single body is:
(a) in relation to transferable securities and money market instruments, the person by whom they are issued; and

(b) in relation to deposits, the person with whom they are placed.

Guidance on spread: general

(1) COLL 5.7.5R (8) to (11) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable non-UCITS retail schemes to benefit from the same flexibility.

(2) The attention of authorised fund managers is specifically drawn to condition (d) in COLL 5.7.5R (9) under which the collateral has to be legally enforceable at any time. It is the FCA's view that it is advisable for an authorised fund manager to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The depositary will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COLL 6.6.4 R (General duties of the depositary).

(3) In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it on behalf of the scheme.

Investment in collective investment schemes

A non-UCITS retail scheme operating as a FAIF must not invest in units in a collective investment scheme (second scheme) unless the second scheme is a scheme which satisfies the criteria in COLL 5.6.10 R (1) to (4):

(1) the second scheme operates on the principle of the prudent spread of risk;

(2) the second scheme is prohibited from investing more than 15% in value of the property of that scheme in units in collective investment schemes or, if there is no such prohibition, the non-UCITS retail scheme's authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made;

(3) the participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:

   (a) related to the net value of the property to which the units relate; and
   
   (b) determined in accordance with the scheme; and

(4) where the second scheme is an umbrella, the provisions in (1) to (3) and COLL 5.7.5 R (Spread: general) apply to each sub-fund as if it were a separate scheme.
Feeder schemes which (in respect of investment in units in collective investment schemes) are dedicated to units in a single collective investment scheme must, in addition to the investment in the master scheme, only hold cash or near cash to maintain sufficient liquidity to enable the scheme to meet its commitments, such as redemptions. Feeder schemes may also use techniques and instruments for the purpose of efficient portfolio management, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

Due diligence requirements

(1) A non-UCITS retail scheme operating as a FAIF must not invest in units in schemes in COLL 5.7.7R (1) to (3) (‘second schemes’) unless the authorised fund manager has carried out appropriate due diligence on each of the second schemes and:

(a) is satisfied, on reasonable grounds and after making all reasonable enquiries, that each of the second schemes complies with relevant legal and regulatory requirements;

(b) has taken reasonable care to determine that:

(i) the property of each of the second schemes is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second scheme;

(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function; and

(iii) each of the second schemes is regularly audited by an independent auditor in accordance with international standards on auditing.

(2) The authorised fund manager of a non-UCITS retail scheme operating as a FAIF invested in one or more second schemes must carry out appropriate due diligence as detailed in (1) on those schemes on an ongoing basis.

The authorised fund manager of a non-UCITS retail scheme operating as a FAIF which is a feeder scheme must ensure that:

(1) its master scheme; and

(2) where its master scheme is itself a feeder scheme, any scheme into which that master scheme invests;

operates on a basis that is consistent with the rules in this section notwithstanding any due diligence previously carried out which suggested that those schemes would so operate.

An authorised fund manager carrying out due diligence for the purpose of the rules in this section should make enquiries or otherwise obtain information needed to enable him properly to consider:
(1) whether the experience, expertise, qualifications and professional standing of the second scheme’s investment manager is adequate for the type and complexity of the second scheme;

(2) the adequacy of the regulatory, legal and accounting regimes applicable to the second scheme and its investment manager;

(3) whether the second scheme, its investment manager and administrator have complied with their legal and regulatory obligations, including but not limited to an evaluation of the investment manager’s written policies with respect to such compliance;

(4) the extent to which the second scheme’s investment manager adheres to guidance and codes which amount to good practice in the industry;

(5) the adequacy of the second scheme’s systems, controls, governance, accounting, administration, business continuity, disaster recovery, safekeeping, custody and trading and execution arrangements;

(6) the extent to which the property of the second scheme may be rehypothecated and the potential impact of such rehypothecation on the non-UCITS retail scheme operating as a FAIF;

(7) the adequacy of the second scheme’s risk management process, in particular:
   (a) the methodology by which risk is measured and its practical adequacy in the light of the limitations inherent in risk measures (such as value at risk), including where appropriate, reference to market risk, credit risk (including counterparty credit risk), liquidity risk, operational risk and outsourcing risk;
   (b) the extent to which the second scheme’s investment manager carries out stress testing and backtesting, to determine how potential changes in market conditions could impact on the value of the second scheme’s portfolio;
   (c) the reporting, escalation and review processes within the second scheme’s governance structure;
   (d) the manner in which risks arising from services provided by third parties are managed, including where those third parties provide prime brokerage, administration, auditing, valuation, risk monitoring, business continuity and disaster recovery services; and
   (e) the management of key person risk;

(8) the adequacy of the second scheme’s investment strategy and trading philosophy;

(9) the implications of currency convertibility (if any);

(10) whether the second scheme produces a valuation that is sufficiently accurate for the authorised fund manager to be reasonably satisfied that the price of the FAIF’s units can be calculated in accordance with COLL 6.3 (Valuation and pricing), including but not limited to an assessment of:
the roles and responsibilities of each of the parties involved in the second scheme’s valuation process and the extent to which these are defined;

(b) the extent to which the valuation process is segregated or is functionally separate from the second scheme’s investment manager where the second scheme is not subject to completely independent valuation by a third party;

(c) the methods used by the second scheme for the valuation of each part of its property including those assets which are difficult to value or which are not subject to independent market pricing;

(d) the extent to which the investment manager of the second scheme does not rely on prices from external sources, and its written policies relating to this;

(e) the manner in which the investment manager of the second scheme selects and monitors the adequacy of its pricing sources;

(f) the extent to which the investment manager of the second scheme operates a valuation policy that is consistent and fair to both subscribing and redeeming investors from the second scheme;

(11) the level of liquidity, redemption policy and dealing arrangements offered by the second scheme and whether they are sufficient for the investing scheme to be able to meet its obligations in respect of redemptions; wherever appropriate the authorised fund manager may need to consider how many second schemes the investing scheme should invest in to ensure that that scheme can meet its redemption obligations; and

(12) any relevant conflicts of interest that may arise out of the relationships of the second scheme’s investment manager with other relevant parties and in particular detract from the integrity of the second scheme’s decision-making process, including:

(a) relationships with brokers or service providers;

(b) conflicts that may be generated by fee structures;

(c) use of dealing commission to purchase goods or services;

(d) conflicts that may arise from the second scheme’s investment manager managing that scheme alongside other business; and

(e) the conflicts of interest that may arise (if any) between the second scheme’s investment manager and any person instructed to carry out due diligence on the authorised fund manager’s behalf.

Non-UCITS retail schemes that are umbrellas with FAIF sub-funds

In relation to a non-UCITS retail scheme which is an umbrella comprised of sub-funds which are:

(1) FAIFs; or

(2) a mixture of FAIFs and standard non-UCITS retail schemes;
the provisions in this section apply to each *sub-fund* operating as a *FAIF* as they would to a separate *scheme*. 
5.8 Investment powers and borrowing limits for feeder UCITS

Application

5.8.1 (1) This section applies to:
   (a) the authorised fund manager of a feeder UCITS;
   (b) the depositary of a feeder UCITS; and
   (c) an ICVC which is a feeder UCITS;
   where the scheme is a UCITS scheme.

(2) Where this section refers to a rule or guidance in ■ COLL 5.1 to ■ COLL 5.5, those rules and guidance, and any rules and guidance to which they refer, must be read as if a reference to a UCITS scheme were a reference to a feeder UCITS.

(3) Where the sub-fund of a UCITS scheme is a feeder UCITS, the provisions in this section apply to each sub-fund as they would for an authorised fund.

Permitted types of scheme property

5.8.2 A feeder UCITS must invest at least 85% in value of the scheme property in units of a single master UCITS.

[Note: article 58(1) of the UCITS Directive]

5.8.2A The authorised fund manager of a pension feeder fund that is a feeder UCITS must ensure that the single master UCITS is:

   (1) a UCITS scheme; or

   (2) an EEA UCITS scheme that is a recognised scheme.

Balance of scheme property: investment restrictions on a feeder UCITS

5.8.3 A feeder UCITS may hold up to 15% in value of the scheme property in one or more of the following:

   (1) cash or near cash in accordance with ■ COLL 5.5.3 R (Cash and near cash);
(2) derivatives and forward transactions which may be used only for the purposes of hedging and in accordance with the rules set out at COLL 5.8.7 R (Other provisions applicable to a feeder UCITS); and

(3) (for an ICVC) movable and immovable property which is essential for the direct pursuit of the business.

[Note: article 58(2) first subparagraph of the UCITS Directive]

5.8.4 Exposure to derivatives

In calculating the global exposure of a feeder UCITS to derivatives and forward transactions in accordance with COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), the feeder UCITS must combine its own direct exposure under COLL 5.8.3R (2) with either:

(1) the master UCITS’ actual exposure to derivatives and forward transactions in proportion to the feeder UCITS’ investment into the master UCITS; or

(2) the master UCITS’ potential maximum global exposure to derivatives and forward transactions provided for in the master UCITS’ instrument constituting the fund or its prospectus in proportion to the feeder UCITS investment into the master UCITS.

[Note: article 58(2) second subparagraph of the UCITS Directive]

5.8.5 Prudent spread of risk

An authorised fund manager must ensure that, to the extent that the feeder UCITS invests in assets other than units of a master UCITS, the feeder UCITS complies with COLL 5.2.3 R (1) (Prudent spread of risk).

5.8.6 Investment powers: general

The scheme property of a feeder UCITS must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the instrument constituting the fund may restrict the investment and borrowing powers of a scheme further than the relevant restrictions in this section.

5.8.7 Other provisions applicable to a feeder UCITS

The following rules and guidance in COLL 5.1 (Introduction), COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.5 (Cash, borrowing, lending and other provisions) apply to the authorised fund manager of a UCITS scheme which is a feeder UCITS and to an ICVC which is a feeder UCITS:

(1) COLL 5.1.1 R (Application), COLL 5.1.2G (1) (Purpose) and COLL 5.1.3 R (Treatment of obligations);

(2) COLL 5.2.1 R (Application), COLL 5.2.2 R (Table of application) and COLL 5.2.2A G;

(3) COLL 5.2.5 R (Valuation) and COLL 5.2.6 G (Valuation guidance);
(4) COLL 5.2.10 R (Eligible markets: requirements);

(5) COLL 5.2.11R (7) (Spread: general);

(6) COLL 5.2.11B R (Counterparty risk and issuer concentration);

(7) COLL 5.2.15R (1) (Investment in associated collective investment schemes);

(8) COLL 5.2.19 R (1), COLL 5.2.19 R (2) and COLL 5.2.19R (4) (Derivatives: general);

(9) COLL 5.2.20 R (Permitted transactions (derivatives and forwards));

(10) COLL 5.2.20A R (Financial indices underlying derivatives),
    COLL 5.2.20BG (1) and COLL 5.2.20BG (4) (Guidance on financial indices underlying derivatives);

(11) COLL 5.2.21 R (Transactions for the purchase of property);

(12) COLL 5.2.22 R (Requirement to cover sales) and COLL 5.2.22A G (Guidance on requirement to cover sales);

(13) COLL 5.2.23 R (OTC Transactions in derivatives), COLL 5.2.23A R and COLL 5.2.23B R);

(14) COLL 5.2.23C R (Valuation of OTC derivatives);

(15) COLL 5.2.26 R (Investment in deposits);

(16) COLL 5.5.1 R to COLL 5.5.7A G (Cash, borrowing, lending and other provisions); and

(17) COLL 5.5.9 R (Guarantees and indemnities) and COLL 5.5.10 G (Guidance on restricting payments).
Chapter 6

Operating duties and responsibilities
6.1 Introduction and Application

Application

6.1.1 R This chapter applies to:

(1) an authorised fund manager of an AUT, ACS or an ICVC;
(2) any other director of an ICVC;
(3) a depositary of an AUT, ACS or an ICVC; and
(4) an ICVC,

where such AUT, ACS or ICVC is a UCITS scheme or a non-UCITS retail scheme.

Purpose

6.1.2 G This chapter helps in achieving the statutory objective of protecting consumers. It provides the operating framework within which the authorised fund must be operated on a day-to-day basis to ensure that clients are treated fairly when they become, remain or as they cease to be unitholders.

Explanation of this chapter

6.1.3 G (1) The authorised fund manager operates the scheme on a day-to-day basis. Its operation is determined by the rules in this chapter, which require appropriate powers in the instrument constituting the fund or refer to the need to state the relevant operating procedures in the prospectus of the scheme.

(2) (a) The authorised fund manager does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other persons.

(b) The rules in this chapter set out the parameters of such delegation, except in relation to a non-UCITS retail scheme managed by a full-scope UK AIFM, where this chapter supplements FUND 3.10 (Delegation).

(3) The depositary’s duty is, generally speaking, to ensure the safe custody of scheme property and to oversee certain functions of the authorised fund manager (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a trustee of an AUT are similar to, but not the same as, the oversight responsibilities of the depositary of an ICVC or ACS. These differences result from the different legal structure of the authorised funds and the trustee’s obligations under trust law.
6.2 Dealing

Application

6.2.1 G
() This section applies to an authorised fund manager, a depositary, an ICVC and any other director of an ICVC.

Purpose

6.2.2 G
(1) This section helps in achieving the statutory objective of securing an appropriate degree of protection for consumers. In accordance with Principle 6, this section is also concerned with ensuring the authorised fund manager pays due regard to its clients’ interests and treats them fairly.

(2) An authorised fund manager of an AUT, ACS or ICVC is responsible for arranging for the issue and the cancellation of units for the authorised fund. An authorised fund manager of an AUT, ICVC or co-ownership scheme is permitted to sell and redeem units for its own account. An authorised fund manager of a limited partnership scheme is only permitted to sell and redeem units as agent for the scheme. The rules in this section are intended to ensure that the authorised fund manager treats the authorised fund fairly when arranging for the issue or cancellation of units, and treats clients fairly when they purchase or sell units.

(3) This section also sets out common standards for how the amounts in relation to unit transactions are to be paid. These arrangements include the initial offer of units, the exchange of units for scheme property and issues and cancellations of units by an ICVC, or by the depositary of an AUT or ACS, carried out directly with the unitholder.

(4) This section also sets out rules and guidance relating to the authorised fund manager’s controls over the issue and cancellation of units including any box holdings.

(5) The requirements in this section are to be applied separately to each sub-fund of a scheme which is an umbrella, and, if appropriate, the currency of a sub-fund may be used instead of the base currency of the umbrella.

Initial offers

6.2.3 R
(1) During the initial offer period, units may only be issued at the initial price.
(2) The length of any initial offer should not be unreasonable when considered alongside the characteristics of the authorised fund.

(3) The authorised fund manager must, as soon as practicable after receiving the initial price from the purchaser and no later than the fourth business day following the end of the initial offer, pay the depositary in respect of any unit it has agreed to sell during the period of the initial offer:

(a) in the case of a single-priced authorised fund, the initial price of that unit; or

(b) in the case of a dual-priced authorised fund, the initial price of that unit less, where relevant, an amount not exceeding the amount of any preliminary charge stated in the prospectus.

(4) The period of the initial offer comes to an end if the authorised fund manager reasonably believes the price that would reflect the current value of the scheme property would vary by more than 2% from the initial price.

Initial offer: guidance

6.2.4 (1) Details of any initial offer period must be provided in the relevant prospectus as described in COLL 4.2.5R (17)(h) (Table: contents of the prospectus).

(2) It may be appropriate that the initial offer for a scheme operating limited issue or limited redemption arrangements, or intending to invest in illiquid assets, is longer than one for a scheme which does not have these features.

Issue and cancellation of units by an ICVC

6.2.5 (1) Units in an ICVC are issued or cancelled by the ACD making a record of the issue or cancellation and of the number of the units of each class concerned, and cannot be issued or cancelled in any other manner, unless COLL 3.2.6R (11) (Table: contents of the instrument constituting the fund) applies.

(2) The time of the issue or cancellation under (1) is the time when the record is made.

Issue and cancellation of units in an AUT or ACS

6.2.6 (1) The depositary must issue or cancel units in an AUT or ACS when instructed by the authorised fund manager.

(2) Any instructions given by the authorised fund manager must state, for each class of unit to be issued or cancelled, the number to be issued or cancelled, expressed either as a number of units or as an amount in value (or as a combination of the two).

(3) If the depositary is of the opinion that it is not in the interests of unitholders that any units should be issued or cancelled or that to do so would not be in accordance with the trust deed, contractual scheme deed or prospectus, it must notify the authorised fund manager.
manager of that fact and it is then relieved of the obligation to issue or cancel those units.

**Issue and cancellation of units in multiple classes**

If an authorised fund has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if:

(1) the depositary gives its prior agreement; and

(2) the relevant classes:

(a) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or

(b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in each class is calculated by reference to undivided shares in the scheme property.

**Issue and cancellation of units through an authorised fund manager**

(1) The authorised fund manager may require, on agreement with the depositary, or may permit, on the request of the investor, direct issues and cancellations of units by an ICVC or by the depositary of an AUT or ACS.

(2) If (1) applies:

(a) the instrument constituting the fund must provide for this; and

(b) the prospectus must provide details of the procedure to be followed which must be consistent with the rules in this section.

**Controls over the issue and cancellation of units**

(1) An authorised fund manager must ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to unitholders for that class.

(2) An authorised fund manager must not:

(a) for an AUT or ACS, when giving instructions to the depositary for the issue or cancellation of units; or

(b) for an ICVC, when arranging for the issue or cancellation of units; do, or omit to do, anything that would, or might, confer on itself or an associate a benefit or advantage at the expense of a unitholder or a potential unitholder.

(3) For the purpose of (1), the authorised fund manager may take into account instructions to redeem units at the following valuation point received before any time agreed with the depositary for such purpose.
Controls over the issue and cancellation of units - guidance

6.2.9  [G]

(1) As the authorised fund manager normally controls the issue, cancellation, sale and redemption of an authorised fund's units, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its clients.

(2) SYSC 3.1.1 R (Systems and controls) requires that a firm take reasonable care to establish and maintain such systems and controls as are appropriate to its business and Principle 8 requires a firm to manage conflicts of interest between itself and a customer fairly.

(3) To manage the conflict of interest that arises, when an authorised fund manager gives an instruction to issue or cancel units, the price of the units should be calculated at the valuation point before or after the instruction has been given, in accordance with (4).

(4) An authorised fund manager should agree a period of time with the depositary during which it will give instructions to issue or cancel units. Where the authorised fund manager operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next valuation point but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.

(5) The last valuation point should be used for the pricing of units where instructions are given before the expiry of the period of time agreed in (4); otherwise the next valuation point should be used.

(6) Where an in specie issue or cancellation occurs it should be undertaken using the next valuation point's price.

Modification to number of units issued or cancelled

6.2.10  [R]

(1) Any instruction for the issue or cancellation of units under COLL 6.2.5 R (Issue and cancellation of units by an ICVC) or COLL 6.2.6 R (Issue and cancellation of units in an AUT or ACS) may be modified but only if the depositary agrees and has taken reasonable care to determine that:

(a) the modification corrects an error in the instruction; and

(b) the error is an isolated one.

(2) Any error in (1) must be corrected within the payment period applicable under COLL 6.2.13 R (Payment for units issued) or COLL 6.2.14 R (Payment for cancelled units).

Compensation for box management errors

6.2.11  [R]

(1) Where the authorised fund manager has not complied with COLL 6.2.8 R (1) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the authorised fund any costs it may have incurred in correcting the position.

(2) The authorised fund manager need not reimburse the authorised fund when:
(a) the amount under (1) is not, in the depositary’s opinion, material to the authorised fund;

(b) the authorised fund manager can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and

(c) the requirements of COLL 6.2.10 R (Modification to number of units issued or cancelled) are complied with.

### Box management errors guidance

**Correction of box management errors**

<table>
<thead>
<tr>
<th><strong>1 Controls by authorised fund managers</strong></th>
<th>An authorised fund manager needs to be able to demonstrate that it has effective controls over:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>its calculations of what units are owned by it (its ‘box’); and</td>
</tr>
<tr>
<td>(2)</td>
<td>compliance with COLL 6.2.8 R which is intended to prevent a negative box.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th><strong>2 Controls by depositaries</strong></th>
<th>Under COLL 6.6.4 (General duties of the depositary), a depositary should take reasonable care to ensure that a scheme is managed in accordance with COLL 6.2 (Dealing) and COLL 6.3 (Pricing and valuation).</th>
</tr>
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<tr>
<td>(1)</td>
<td>A depositary should therefore make a regular assessment of the authorised fund manager’s box management procedures (including supporting systems) and controls. This should include reviewing the authorised fund manager’s controls and procedures when the depositary assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.</td>
</tr>
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<tr>
<th><strong>3 Recording and reporting of box management errors</strong></th>
<th>An authorised fund manager should record all errors which result in a breach of COLL 6.2.8 R (Controls over the issue and cancellation of units) and as soon as an error is discovered, the authorised fund manager should report the fact to the depositary, together with details of the action taken, or to be taken, to avoid repetition of the error.</th>
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<tbody>
<tr>
<td>(2)</td>
<td>A depositary should report material box management errors to the FCA immediately. Materiality should be determined by taking into account a number of factors including:</td>
</tr>
<tr>
<td></td>
<td>(a) the implications of the error for the sufficiency of controls put into place by the authorised fund manager;</td>
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<tr>
<td></td>
<td>(b) the significance of any breakdown in the authorised fund manager’s management controls or other checking procedures;</td>
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<td></td>
<td>(c) the significance of any failure of systems or back-up arrangements;</td>
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<td></td>
<td>(d) the duration of an error; and</td>
</tr>
<tr>
<td></td>
<td>(e) the level of compensation due to the scheme, and an authorised fund manager’s ability (or otherwise) to meet claims for compensation in full.</td>
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</table>
(3) A depositary should also make a return to the FCA (in the manner prescribed by SUP 16.6.8 R) on a quarterly basis.

Payment for units issued

6.2.13 R

(1) The authorised fund manager must, by the close of business on the fourth business day following the issue of any units, arrange for payment to the depositary of an AUT or ACS or the ICVC of:

   (a) in the case of a single-priced authorised fund, the price of the units and any payments required under COLL 6.3.8 R (Dilution);

   (b) in the case of a dual-priced authorised fund, the issue price of the units; or

   (c) in the case of a regulated money market fund, the sum required pursuant to article 33 of the Money Market Funds Regulation.

(2) The authorised fund manager must make the payment referred to in (1) in cash or cleared funds unless COLL 6.2.15 R (In specie issue and cancellation) applies.

(3) Where the authorised fund manager has not complied with (1), it must reimburse the authorised fund for any lost interest unless the amount involved is not, in the depositary’s opinion, material to the authorised fund.

Payment for cancelled units

6.2.14 R

(1) On cancelling units the authorised fund manager must, before the expiry of the fourth business day following the cancellation of the units or, if later, as soon as practicable after delivery to the depositary of the AUT or ACS or the ICVC of such evidence of title to the units as it may reasonably require, require the depositary to pay:

   (a) in the case of a single-priced authorised fund, the price of the units (less any deduction required under COLL 6.3.8 R);

   (b) in the case of a dual-priced authorised fund, the cancellation price of the units; or

   (c) in the case of a regulated money market fund, the sum required pursuant to article 33 of the Money Market Funds Regulation; to the authorised fund manager or, where relevant, the unitholder or, for a relevant pension scheme, in accordance with the relevant provisions of the trust deed or contractual scheme deed.

(2) If the authorised fund manager has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in COLL 5 (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.

(3) If (2) applies, the authorised fund manager must take reasonable steps to rectify the currency shortage as quickly as possible.

(4) This rule does not apply where COLL 6.2.15 R is in operation.

(5) Nothing in this section requires an ICVC, a depositary or an authorised fund manager to part with money or to transfer scheme
property for a cancellation or redemption of units where any money due on the earlier issue or sale of those units has not been received.

In specie issue and cancellation

6.2.15 The depositary may take into or pay out of scheme property assets other than cash as payment for the issue or cancellation of units but only if:

(1) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of unitholders; and

(2) the instrument constituting the fund so provides.

Sale and redemption

6.2.16 (1) In accordance with COLL 4.2.5R (17) (Table: contents of the prospectus), the authorised fund manager must describe the arrangements for the sale and redemption of units in the prospectus.

(2) The authorised fund manager must, at all times during the dealing day, be willing to effect the sale of units in the authorised fund, in accordance with the conditions in the instrument constituting the fund and the prospectus unless:

(a) it has reasonable grounds to refuse such sale; or

(b) the issue of units is prevented under COLL 6.2.18 R (Limited issue).

(3) Subject to COLL 6.2.19 R (Limited redemption) and COLL 6.2.21 R (Deferred redemption), the authorised fund manager must, at all times during the dealing day, on request of any qualifying unitholder, effect the redemption of units in accordance with the conditions in the instrument constituting the fund and the prospectus unless it has reasonable grounds to refuse such redemption.

(4) On agreeing to a redemption of units in (3), the authorised fund manager must pay the unitholder the appropriate proceeds of redemption within the period specified in (5) unless the authorised fund manager has reasonable grounds for withholding all or any part of the proceeds.

(5) Except where (5A) applies the period in (4) expires at the close of business on the fourth business day following the later of:

(a) the valuation point at which the price for the redemption was determined; or

(b) the time when the authorised fund manager has all the duly executed instruments and authorisations to effect (or enable the authorised fund manager to effect) the transfer of title to the units.

(5A) Where a non-UCITS retail scheme operating as a FAIF operates limited redemption arrangements, the period in (4) expires no later than the expiry of a period of 185 days from the date of receipt and acceptance of the instruction to redeem.
(6) Except where (7) applies, and subject to COLL 6.2.21 R (Deferred redemption), the authorised fund manager must sell or redeem units at a price determined no later than the end of the business day immediately following the receipt and acceptance of an instruction to do so, or at the next valuation point for the purposes of dealing in units if later.

(7) Where the authorised fund operates limited redemption arrangements, the authorised fund manager must sell or redeem units at a price determined no later than the expiry of a period of 185 days from the date of the receipt and acceptance of the instruction to sell or redeem.

(8) [deleted]

(9) [deleted]

(10) Paragraphs (4), (5) and COLL 6.3.5AR (2) (Sale and redemption prices for single-priced authorised funds) do not apply where the authorised fund manager of an AUT or ICVC is buying units as principal on an investment exchange (for an AUT in accordance with a power in the trust deed) and settlement will be made in accordance with the rules of that exchange.

Sale and redemption: guidance

(1) The prospectus of an authorised fund may allow the authorised fund manager to identify a point in time in advance of a valuation point (a cut-off point) after which it will not accept instructions to sell or redeem units at that valuation point. In order to protect customers’ interests, the cut-off point should be no earlier than the close of business on the business day before the valuation point it relates to. If there is more than one valuation point in a day the cut-off should not be before any previous valuation point.

(2) Where the authorised fund operates limited redemption arrangements, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185 day limit in COLL 6.2.16 R (7) (Sale and redemption) is complied with.

(3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to sell or redeem to the authorised fund manager but not to differentiate between unitholders or potential unitholders.

(4) [deleted]
Limited issue

6.2.18  R

(1) If an authorised fund limits the issue of any class of unit, the prospectus of an authorised fund must provide for the circumstances and conditions when units will be issued.

(2) Where (1) applies, the authorised fund manager may not provide for the further issue of units unless, at the time of the issue, it is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the scheme's investment objective or materially prejudicing existing unitholders.

(3) Within a scheme, unit classes may operate different arrangements for the issue of units provided there is no prejudice to the interests of any unitholder.

Limited redemption

6.2.19  R

(1) The instrument constituting the fund and the prospectus of a non-UCITS retail scheme operating as a FAIF, or that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for limited redemption arrangements appropriate to its aims and objectives.

(2) Where (1) applies, the scheme must provide for sales and redemptions at least once in every six months.

(3) Within a scheme, unit classes may operate different arrangements for sales and redemptions of units provided there is no prejudice to the interests of any unitholder.

(4) The scheme may provide for sales of units of any class to be executed at a greater frequency than redemptions of units of the same class.

Limited redemption: guidance

6.2.20  G

The conditions for limited redemption arrangements in COLL 6.2.19 R should be considered, for AUTs and ACSs as well as for ICVCs, in conjunction with PERG 9 (Meaning of an open-ended investment company) and PERG 9.8 (The investment condition: the ‘expectation test’ section 236(3)(a) of the Act).

Deferred redemption

6.2.21  R

(1) Subject to (1A), (3), and (4), the instrument constituting the fund and the prospectus of an authorised fund which has at least one valuation point on each business day may permit deferral of redemptions at a valuation point to the next valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the prospectus, of the authorised fund’s value.

(1A) Subject to (3) the instrument constituting the fund and the prospectus of a non-UCITS retail scheme operating as a FAIF may permit deferral of redemptions at a valuation point to a following valuation point where the requested redemptions exceed 10%, or some other reasonable proportion disclosed in the prospectus, of the authorised fund’s value.
(2) Any deferral of redemptions under (1) or (1A) must be undertaken in accordance with the procedures explained in the prospectus which must ensure:

(a) the consistent treatment of all unitholders who have sought to redeem units at any valuation point at which redemptions are deferred; and

(b) that all deals relating to an earlier valuation point are completed before those relating to a later valuation point are considered.

(3) Any deferral under (1A) is subject to the limitations on payments to unitholders in COLL 6.2.16 R (5A).

(4) Any deferral under (1) in relation to an authorised fund that is a regulated money market fund must be consistent with the Money Market Funds Regulation, where relevant.

Deferred redemption: guidance

6.2.22 G

(1) In times of high levels of redemption, deferred redemption will enable the authorised fund manager to protect the interests of continuing unitholders by allowing it to match the sale of scheme property to the level of redemptions. This should reduce the impact of dilution on the scheme.

(2) Article 34 of the Money Market Funds Regulation provides for deferred redemption in relation to certain kinds of regulated money market funds in particular circumstances.

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.

(2) Where the authorised fund manager of a property authorised investment fund becomes aware that a body corporate holds more than the maximum allowable, he must:

(a) notify the body corporate of that event;

(b) not pay any income distribution to the body corporate; and

(c) redeem or cancel the body corporate’s holding down to the maximum allowable within a reasonable time-frame.

(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the authorised fund manager reasonably considers to be
appropriate having regard to the interests of the *unitholders* as a whole.

**6.2.24** Reasonable steps to monitor the maximum allowable include:

1. regularly reviewing the *register*; and
2. taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*. 
6.3 Valuation and pricing

Application

6.3.1 Subject to (3) and (4), this section applies to an authorised fund manager, a depositary, an ICVC and any other director of an ICVC.

(2) [deleted]

(3) The following rules and guidance do not apply to an authorised fund manager, a depositary, an ICVC, or any other director of an ICVC where the authorised fund is a regulated money market fund:

(a) COLL 6.3.3R;
(b) COLL 6.3.3DR;
(c) COLL 6.3.4R(1) and (3) to (6D);
(d) COLL 6.3.5R; and
(e) COLL 6.3.5AR to COLL 6.3.5CG.

(4) Where an authorised fund is a regulated money market fund, COLL 6.3.6G applies to the authorised fund manager and depositary of that authorised fund to the extent it is consistent with the requirements of the Money Market Funds Regulation.

Purpose

6.3.2 In accordance with Principle 6, this section is intended to ensure that the authorised fund manager pays due regard to its clients' interests and treats them fairly.
(2) An authorised fund manager is responsible for valuing the scheme property of the authorised fund it manages and for calculating the price of units in the authorised fund. This section protects clients by:

(a) setting out rules and guidance to ensure the prices of units in both a single-priced authorised fund and a dual-priced authorised fund are calculated fairly and regularly;

(b) allowing the authorised fund manager to mitigate the effects of any dilution (reduction) in the value of the scheme property caused by buying and selling underlying investments as a result of the issue or cancellation of units; and

(c) [deleted]

(d) ensuring that prices are made public in an appropriate manner.

(3) The requirements in this section are to be applied separately to each sub-fund of a scheme which is an umbrella, and, if appropriate, the currency of a sub-fund may be used instead of the base currency of the umbrella. Consequently different methods of pricing units may be applied by an authorised fund manager to different sub-funds of an umbrella.

(4) The authorised fund manager must follow the same method of pricing for each class of units in an authorised fund, or in a sub-fund of an umbrella.

(5) A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should comply with the requirements of:

(a) FUND 3.9 (Valuation); and

(b) this chapter.

Valuation

(1) To determine the price of units the authorised fund manager must carry out a fair and accurate valuation of all the scheme property in accordance with the instrument constituting the fund and the prospectus.

(2) For a dual-priced authorised fund, each valuation of the scheme property must consist of two parts, carried out on an issue basis and a cancellation basis respectively.

Accounting procedures

(1) An authorised fund manager of a UCITS scheme must ensure the employment of the accounting policies and procedures referred to in SYSC4.1.9 R (Accounting policies), so as to ensure the protection of unitholders.

(2) Accounting for the scheme shall be carried out in such a way that all assets and liabilities of the scheme can be directly identified at all times.
(3) If the scheme is an umbrella, separate accounts must be maintained for each sub-fund.

[Note: article 8(1) of the UCITS implementing Directive]

6.3.3B R

An authorised fund manager of a UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the United Kingdom, so as to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8(2) of the UCITS implementing Directive]

6.3.3C G

(1) The accounting policies and procedures referred to in COLL 6.3.3B R should enable the authorised fund manager of a UCITS scheme to value the scheme property accurately at each valuation point and to calculate dealing prices by reference to that valuation.

(2) Where different share or unit classes exist, it should be possible to extract from the accounting records the net asset value of each different class.

[Note: recital (9) of the UCITS implementing Directive]

6.3.3D R

An authorised fund manager of a UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages.

[Note: article 8(3) of the UCITS implementing Directive]

Valuation of an immovable

6.3.3E R

An authorised fund manager may only agree a fair and reasonable price for an immovable to reflect a rapid sale if the prospectus states that it may do so, in accordance with COLL 4.2.5R(3)(pa)(ii).

Valuation points

6.3.4 R

(1) An authorised fund must not have fewer than two regular valuation points in any month and if there are only two valuation points in any month, the regular valuation points must be at least two weeks apart.

(2) The prospectus of a scheme must contain information about its regular valuation points for the purposes of dealing in units in accordance with COLL 4.2.5R (16) (Table: contents of the prospectus).

(3) Where a scheme operates limited redemption arrangements, (1) does not apply and the valuation points must be stated in the prospectus but must not be set more than six months apart.
(4) Where a scheme operates limited redemption arrangements, it must be valued and prices published in the manner set out in COLL 6.3.11 R (Publication of prices) at least once in every month.

(5) In (4), a valuation point for the purpose of publishing prices only, does not make it a valuation point for the purpose of (2) unless it is disclosed as such in the prospectus.

(6) Higher volatility funds must have at least one valuation point every business day except where the scheme is a non-UCITS retail scheme operating as a FAIF.

(6A) Qualifying money market funds must have at least one valuation point every business day at which the valuation is carried out on an amortised cost basis.

(6B) [deleted]

(6C) [deleted]

(6D) [deleted]

(7) No valuation points are required during the period of any initial offer.

(8) The authorised fund manager may determine to have an additional valuation point for an authorised fund, in which case it must inform the depositary.

**Price of a unit**

6.3.5 R

(1) An authorised fund manager must ensure that the price of a unit of any class is calculated:

   (a) by reference to the net value of the scheme property; and

   (b) in accordance with the provisions of both the instrument constituting the fund and the prospectus.

(2) Any unit price calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.

(3) For each class of units in a single-priced authorised fund, a single price must be calculated at which units are to be issued and cancelled.

**Sale and redemption prices for single-priced authorised funds**

6.3.5A R

The authorised fund manager of a single-priced authorised fund must not:

(1) sell a unit for more than the price of a unit of the relevant class at the relevant valuation point, to which may be added any preliminary charge permitted and any payment made under COLL 6.3.8 R; or

(2) redeem a unit for less than the price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deduction under COLL 6.3.8 R.
Sale and redemption price parameters for dual-priced authorised funds

6.3.5B R

1. The authorised fund manager of a dual-priced authorised fund must not:
   a. sell a unit for more than the maximum sale price of a unit of the relevant class at the relevant valuation point; or
   b. redeem a unit for less than the cancellation price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted.

2. The maximum sale price of units under (1)(a) is the total of:
   a. the issue price; and
   b. the current preliminary charge.

3. The sale price of units under (1)(a) must not be less than the relevant redemption price under (1)(b).

4. The redemption price under (1)(b) must not exceed the relevant issue price of the relevant units.

5. Subject to COLL 6.7.9 R (Charges for the exchange of units in an umbrella), in the case of an umbrella:
   a. the maximum price at which units in one sub-fund that is a dual-priced authorised fund may be acquired in exchange for units in another sub-fund must not exceed the relevant maximum sale price (less any preliminary charge) of the new units; and
   b. the minimum price at which the old units in a sub-fund that is a dual-priced authorised fund may be taken in exchange must not be less than the equivalent cancellation price.

6.3.5C G

The prospectus may make provision for large deals to be carried out at a higher sale price or a lower redemption price than those published, provided they do not exceed the relevant maximum and minimum parameters.

Profits from dealing as principal

6.3.5D R

1. Where an authorised fund manager (AFM):
   a. accepts instructions to sell and redeem units as principal; and
   b. is able to execute a sale instruction by selling units it has redeemed at the same valuation point, without placing its own capital at risk,

   subject to (2), the AFM must not retain for its own account, or the account of any of its associates, the difference between the price at which a unit was redeemed (before deduction of any redemption charge) and the price at which the same unit was sold (after deduction of any preliminary charge). Any such difference must be allocated in a way that is fair to unitholders.

   2. In calculating the profit arising under (1), the AFM may offset any loss it incurs at the same valuation point, calculated in accordance with (3) below, when dealing as principal in relation to:
(a) a unit issued at that valuation point to fulfil a sale instruction that cannot be matched against any redeemed unit or any other unit of that class held by the manager as principal; and

(b) a unit redeemed and cancelled at that valuation point.

(3) The amount of the loss referred to in (2) is:

(a) for units issued in accordance with (2)(a), the difference between the issue price of a unit and the sale price of that unit, less any preliminary charge;

(b) for units cancelled in accordance with (2)(b), the difference between the cancellation price of a unit and the redemption price of that unit, before any redemption charge is applied.

(4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent valuation point.

(5) This rule applies to the redemption and sale of units of different classes at the same valuation point, if those classes are treated as one for the purpose of COLL 6.2.6AR.

(1) The authorised fund manager may commit its own capital to hold units for the purpose of dealing as principal and may seek to profit from gains in the value of the units it holds, when it issues or redeems units at one valuation point then sells or cancels them at a later valuation point. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the units fall in value, or from the ability to match simultaneous sales and redemptions at different prices at no risk to its own capital.

(2) The AFM may allocate any amount arising under COLL 6.3.5DR(1) in the interests of investors by paying it into scheme property for the benefit of all unitholders. Alternatively, the AFM may redistribute it individually among the transacting investors.

(3) Where the AFM intends to allocate a payment to scheme property, it should determine if the amount (when added to any other amounts of the same kind relating to that class of units) would, if taken into account in the scheme’s valuation, affect the accuracy of the unit prices to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the scheme until the payment is transferred. Such payments into scheme property should be made regularly and no less frequently than payments for the AFM’s management charge are transferred out of scheme property.

(4) The calculation to be performed under COLL 6.3.5DR should be carried out in relation to each valuation point of the scheme on a timely basis. Where it is not practical to do this before unit prices are calculated and published, the AFM should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to scheme property.
### Valuation and pricing guidance

#### 6.3.6 Valuation and pricing

<table>
<thead>
<tr>
<th></th>
<th>The valuation of scheme property</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Where possible, investments should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.</td>
</tr>
<tr>
<td>(2)</td>
<td>For some or all of the investments comprising the scheme property, different prices may quoted according to whether they are being bought (offer prices) or sold (bid prices). The valuation of a single-priced authorised fund should reflect the mid-market value of such investments. In the case of a dual-priced authorised fund, the issue basis of the valuation will be carried out by reference to the offer prices of investments and the cancellation basis by reference to the bid prices of those same investments. The prospectus should explain how investments will be valued for which a single price is quoted for both buying and selling.</td>
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<tr>
<td>(2A)</td>
<td>Schemes investing in approved money-market instruments should value such instruments on an amortised cost basis on condition that: (a) the approved money-market instrument has a residual maturity of less than three months and has no specific sensitivity to market parameters, including credit risk; or (b) the scheme is a qualifying money market fund.</td>
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<tr>
<td>[Note: CESR’s UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive]</td>
<td>[deleted]</td>
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<td>(2B)</td>
<td>[deleted]</td>
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<td>(3)</td>
<td>Any part of the scheme property of an authorised fund that is not an investment should be valued at a fair value, but for immovables this is subject to COLL 5.6.20 R (3) (f) (Standing independent valuer and valuation).</td>
</tr>
<tr>
<td>(4)</td>
<td>For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the investment or other part of the scheme property should, in the case of a single-priced authorised fund, be excluded from the value of an investment or other part of the scheme property. In the case of a dual-priced authorised fund, any such payments should be added to the issue basis of the valuation, or subtracted from the cancellation basis of the valuation, as appropriate. Alternatively, the prospectus of a dual-priced authorised fund may prescribe any other method of calculating unit prices that ensures an equivalent treatment of the effect of these payments.</td>
</tr>
<tr>
<td>(5)</td>
<td>Where the authorised fund manager has reasonable grounds to believe that: (a) no reliable price exists for a security at a valuation point; or (b) the most recent price available does not reflect the authorised fund manager's best estimate of the value of a security at the valuation point</td>
</tr>
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it should value an investment at a price which, in its opinion, reflects a fair and reasonable price for that investment (the fair value price);

(6) The circumstances which may give rise to a fair value price being used include:
(a) no recent trade in the security concerned; or
(b) the occurrence of a significant event since the most recent closure of the market where the price of the security is taken.
In (b), a significant event is one that means the most recent price of a security or a basket of securities is materially different to the price that it is reasonably believed would exist at the valuation point had the relevant market been open.

(7) In determining whether to use such a fair value price, the authorised fund manager should include in his consideration:
(a) the type of authorised fund concerned;
(b) the securities involved;
(c) the basis and reliability of the alternative price used; and
(d) the authorised fund manager’s policy on the valuation of scheme property as disclosed in the prospectus.

(7A) Where the authorised fund manager, the depositary or the standing independent valuer have reasonable grounds to believe that the most recent valuation of an immovable does not reflect the current value of that immovable, then, unless COLL 6.3.6G(1)(7B) applies, the authorised fund manager should consult and agree with the standing independent valuer a fair and reasonable value for the immovable.

(7B) Where the authorised fund manager decides that an immovable must be sold quickly to meet redemption requests as they fall due, it should consult and agree with the standing independent valuer a fair and reasonable price for the immovable to reflect a rapid sale, to extent that the prospectus states that it may do so.

(8) The authorised fund manager should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.

(9) Where a unit price is determined using properly applied fair value prices in accordance with policies in (8), subsequent information that indicates the price should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

2 The pricing controls of the authorised fund manager

(1) An authorised fund manager needs to be able to demonstrate that it has effective controls over its calculations of unit prices.

(2) The controls referred to in (1) should ensure that:
(a) asset prices are accurate and up to date;
(b) investment transactions are accurately and promptly reflected in valuations;
(c) the components of the valuation (including stock, cash, and units in issue), are regularly reconciled to their source or prime records and any reconciling items
resolved promptly and debtors reviewed for recoverability;
(d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
(e) compliance with the investment and borrowing powers is regularly reviewed;
(f) dividends are accounted for as soon as securities are quoted ex-dividend (unless it is prudent to account for them on receipt);
(g) fixed interest dividends, interest and expenses are accrued at each valuation point;
(h) tax positions are regularly reviewed and adjusted, if necessary;
(i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated;
(j) the fund manager regularly reviews the portfolio valuation for accuracy; and
(k) the valuation of OTC derivatives is accurate and up to date and in compliance with the methods agreed with the depositary.

(3) In exercising its pricing controls, the authorised fund manager may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the authorised fund or the materiality of any effect on the price.

(4) Evidence of the exercise of the pricing controls should be retained.

(5) Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in an authorised fund manager’s favour, will make demonstrating effective controls more difficult.

(6) Where the pricing function is delegated to a third party, COLL 6.6.15 R (1) (Committees and delegation) will apply.

3 The depositary’s review of the authorised fund manager’s systems and controls

(1) This section provides details of the types of checks a depositary should carry out to be satisfied that the authorised fund manager adopts systems and controls which are appropriate to ensure that prices of units are calculated in accordance with this section and to ensure that the likelihood of incorrect prices will be minimised. These checks also apply where an authorised fund manager has delegated all or some of its pricing functions to one or more third parties.

(2) A depositary should thoroughly review an authorised fund manager’s systems and controls to confirm that they are satisfactory. The depositary’s review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.

(3) A review should be performed when the depositary is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.
(4) A review should be carried out more frequently where a depositary knows or suspects that an authorised fund manager’s systems and controls are weak or are otherwise unsatisfactory.

(5) Additionally, a depositary should from time to time re-review other aspects of the valuation of the scheme property of each authorised fund for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, units in issue, securities prices (and in particular the prices of OTC derivatives, unapproved securities and the basis for the valuation of unquoted securities) and any other relevant matters, for example an accumulation factor or a currency conversion factor.

(6) A depositary should ensure that any issues, which are identified in any such review, are properly followed up and resolved.

4 The recording and reporting of instances of incorrect pricing

(1) An authorised fund manager should record each instance where the price of a unit is incorrect as soon as the error is discovered, and report the fact to the depositary together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.

(2) In accordance with COLL 6.6.11 G (Duty to inform the FCA), the depositary should report any breach of the rules in COLL 6.3 immediately to the FCA. However, notification should relate to instances which the depositary considers material only.

(3) A depositary should also report to the FCA immediately any instance of incorrect pricing where the error is 0.5% or more of the price of a unit, where a depositary believes that reimbursement or payment is inappropriate and should not be paid by an authorised fund manager.

(4) In accordance with SUP 16.6.8 R, a depositary should also make a return to the FCA on a quarterly basis which summarises the number of instances of incorrect pricing during a particular period.

5 The rectification of pricing breaches

(1) COLL 6.6.3R(3)(c) (Functions of the authorised fund manager) places a duty on the authorised fund manager to take action to reimburse affected unitholders, former unitholders, and the scheme itself, for instances of incorrect pricing, except if it appears to the depositary that the breach is of minimal significance.

(2) A depositary may consider that the instance of incorrect pricing is of minimal significance if:
   (a) the authorised fund manager and depositary meet the standards of control set out in Section 2 and Section 3 of this Table; and
   (b) the error in pricing of a unit is less than 0.5% of the correct price.

(3) In determining (2), if the instance of incorrect pricing is due to one or more factors or exists over a period of time, each price should be considered separately.
(4) If a depositary deems it appropriate, it may, in spite of the circumstances outlined in (2), require a payment from the authorised fund manager or from the authorised fund to the unitholders, former unitholders, the authorised fund or the authorised fund manager (where appropriate).

(5) The depositary should satisfy itself that any payments required following an instance of incorrect pricing are accurately and promptly calculated and paid.

(6) If a depositary considers that reimbursement or payment is inappropriate, it should report the matter to the FCA, together with its recommendation and justification. The depositary should take into account the need to avoid prejudice to the rights of unitholders, or the rights of unitholders in a class of units.

(7) It may not be practicable, or in some cases legally permissible, for the authorised fund manager to obtain reimbursement from unitholders, where the unitholders have benefited from the incorrect price.

(8) In all cases where reimbursement or payment is required, amounts due to be reimbursed to unitholders for individual sums which are reasonably considered by the authorised fund manager and depositary to be immaterial, need not normally be paid.

6.3.7 [deleted]

6.3.8 Dilution

(1) Subject to (1A), when arranging to sell, redeem, issue or cancel units, or when units are issued or cancelled under COLL 6.2.7 R (1) (Issues and cancellations through an authorised fund manager), an authorised fund manager is permitted to:

   (a) require the payment of a dilution levy; or
   
   (b) make a dilution adjustment; or
   
   (c) neither require a dilution levy nor make a dilution adjustment;

   in accordance with its statements in the prospectus required by COLL 4.2.5R (18) (Table: contents of the prospectus).

(1A) When arranging to sell, redeem, issue or cancel units, or when units are issued or cancelled under COLL 6.2.7R(1) (Issues and cancellations through an authorised fund manager), an authorised fund manager of a regulated money market fund may only require payment of a dilution levy or make a dilution adjustment to the extent it is permissible under the Money Market Funds Regulation.

(2) An authorised fund manager operating either a dilution levy or a dilution adjustment, must operate that measure in a fair manner to reduce dilution and solely for that purpose.

(3) A dilution levy becomes due at the same time as payment or transfer of property becomes due for the issue, sale, redemption or cancellation and any such payment in respect of a dilution levy must
be paid to the depositary to become part of scheme property as soon as practicable after receipt.

(4) A dilution adjustment may be made as part of the calculation of the unit price for the purpose of reducing dilution in the scheme or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the issue or cancellation of units.

(5) Where the authorised fund manager decides to make or not to make a dilution adjustment, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an affected person.

(6) As soon as practicable after a valuation point, the authorised fund manager must provide the depositary with the amount or rate of any dilution adjustment made to the price or any dilution levy applied.

Forward pricing

6.3.9 (1) Subject to (7), for the sale and redemption of units, all deals must be at a forward price.

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

(7) Deals for the sale and redemption of units in a regulated money market fund need not be at a forward price where the circumstances in article 34(2) of the Money Market Funds Regulation apply.

Publication of prices

6.3.10 [deleted]

Manner of price publication

6.3.12 (1) In determining the appropriate manner of making prices public, the authorised fund manager should ensure that:

(a) a unitholder or potential unitholder can obtain the prices at a reasonable cost;

(b) prices are available at reasonable times;

(c) publication is consistent with the manner and frequency at which the units are dealt in;

(d) the manner of publication is disclosed in the prospectus; and
(e) prices are published in a consistent manner.

(2) Examples of what might be deemed appropriate include:
   (a) publication in a national newspaper;
   (b) supply through an advertised local rate or freephone telephone number;
   (c) publication on the internet;
   (d) inclusion in a database of prices which is publicly available; or
   (e) communication to all existing unitholders.

(3) The authorised fund manager should make previous prices available to any unitholder or potential unitholder.

Maintaining the value of a qualifying money market fund

6.3.13 The authorised fund manager of a qualifying money market fund valuing scheme property on an amortised cost basis must:

(1) carry out a valuation of the scheme property on a mark to market basis at least once every week and at the same valuation point used to value the scheme property on an amortised cost basis; and

(2) ensure that the value of the scheme property when valued on a mark to market basis does not differ by more than 0.5% from the value of the scheme property when valued on an amortised cost basis.

6.3.14 The authorised fund manager should advise the depositary when the mark to market value of a qualifying money market fund valuing scheme property on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The authorised fund manager of a qualifying money market fund should agree procedures with the depositary designed to stabilise the value of the scheme in these events.
6.4 Title and registers

Application

6.4.1 (1) This section applies to an authorised fund manager and a depositary of an AUT or ACS.

(2) COLL 6.4.9 (Plan registers) also applies to the ACD, any other director and the depositary of an ICVC.

Purpose

6.4.2 The aim of this section is to protect consumers, by setting out the requirements for a register of unitholders for an AUT or ACS and for a plan register for an authorised fund, so a proper record of ownership of units is maintained, whether held directly or indirectly through a group plan.

Explanation of this section

6.4.3 (1) (a) This section deals with matters relating to the register of unitholders of units in an AUT or ACS including its establishment and contents.

(b) The authorised fund manager or depositary may be responsible for the register.

(c) In any event, the person responsible for the register must be stated in the trust deed or contractual scheme deed and this section details what his duties are.

(d) The provisions relating to documents evidencing title to units are dependent on the provisions in the trust deed or contractual scheme deed and their operation should be set out in the prospectus.

(2) For an ICVC, requirements as to the register of holders and transfer of units are contained in Schedule 3 of the OEIC Regulations (Register of shareholders).

(3) COLL 6.4.9 makes provision to ensure that if the cost of the plan register is borne by the scheme, plan investors have the same rights in respect of notice and disclosure as unitholders on the main register.
Register: general requirements and contents

1. Either:
   (a) the manager or the trustee (as nominated in the trust deed); or
   (b) the authorised contractual scheme manager or the depositary of the ACS (as nominated in the contractual scheme deed);

   must establish and maintain a register of unitholders as a document in accordance with this section.

2. The manager or trustee or the authorised fund manager or depositary in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.

3. The register must contain:
   (a) the name and address of each unitholder (for joint unitholders, no more than four need to be registered);
   (b) the number of units of each class held by each unitholder;
   (c) the date on which the unitholder was registered for units standing in his name; and
   (d) the number of units of each class currently in issue.

4. No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager or trustee or the authorised fund manager or depositary, but this does not affect their obligations under § COLL 6.4.9 R (1) (Plan registers).

5. The register is conclusive evidence of the persons entitled to the units entered in it.

6. The person responsible for the register in (1) must:
   (a) take reasonable steps to alter the register on receiving written notice of a change of name or address of any unitholder;
   (b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;
   (c) make the register available for inspection free of charge in the United Kingdom by or on behalf of any unitholder (including the manager or authorised fund manager), during office hours;
   (d) supply free of charge to any unitholder or his authorised representative a copy of the entries on the register relating to that unitholder on request;
   (e) where a unitholder defaults on paying for the issue or sale of units, make an alteration or deletion in the register to compensate for the default after which the manager or authorised fund manager becomes entitled to those units (until those units are either cancelled or re-sold and paid for); and
   (f) carry out any conversion of units allowed for by § COLL 6.4.8 R (Conversion of units) after consultation with the manager or trustee or the authorised fund manager or depositary, as appropriate.
The authorised fund manager as unitholder

6.4.5

(1) Subject to (3), if no person is entered in the register as the unitholder of a unit, the authorised fund manager must be treated as the unitholder of each such unit which is in issue.

(2) Where units are transferred to the authorised fund manager, they need not be cancelled and the authorised fund manager need not be entered on the register as the new unitholder.

(3) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager is not entered in the register as the new unitholder.

Transfer of units by act of parties: AUTs and ACSs

6.4.6

(1) Every unitholder of an AUT is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by the trust deed or prospectus.

(1A) Provided:

(a) the requirements in COLL 6.4.6A R (Transfer of units in an ACS) are satisfied; and

(b) transfers of units are allowed by the contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules;

every unitholder of an ACS is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by the contractual scheme deed and prospectus.

(2) Every instrument of transfer of units of an AUT or ACS must be signed by, or on behalf of, the unitholder transferring the units (or, for a body corporate, sealed by that body corporate or signed by one of its officers (or in Scotland, two of its officers)) authorised to sign it and, unless the transferee is the authorised fund manager, the transferee must be treated as the unitholder until the name of the transferee has been entered in the register.

(3) In the case of an AUT or ACS, every instrument of transfer (stamped as necessary) must be left for registration, with the person responsible for the register, accompanied by:

(a) any necessary documents that may be required by legislation; and

(b) any other evidence reasonably required by the person responsible for the register.

(4) In the case of an AUT or ACS, the details of instruments of transfer must be kept for a period of six years from the date of its registration.
(5) In the case of an AUT or ACS, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.

### Transfer of units in an ACS

#### 6.4.6A

(1) Where transfer of units in an ACS is allowed by its contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules, the authorised contractual scheme manager of the ACS must take reasonable care to ensure that units are only transferred if the conditions specified by the FCA under (2) are met.

(2) The FCA specifies that for the purposes of (1), and for the purposes of □ COLL 3.2.6 R(27G) (ACSs: UCITS and NURS transfer of units) and □ COLL 4.2.5 R(5B) (ACSs: UCITS and NURS transfer of units), units in an ACS may only be transferred to a person that is a:

(a) professional ACS investor; or
(b) large ACS investor; or
(c) person who already holds units in the scheme.

#### 6.4.6B

The FCA recognises that some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder, or otherwise) and are accordingly outside the control of the authorised contractual scheme manager. The authorised contractual scheme manager is expected to comply with its responsibilities under □ COLL 6.6.3B R (Redemption of ACS units by an authorised contractual scheme manager) in such cases by redeeming such units.

### Certificates

#### 6.4.7

(1) Following the sale of units or as a result of □ COLL 6.4.6 R (Transfer of units by act of parties: AUTs and ACSs) a document recording title to those units may be issued in such a form as the trust deed or contractual scheme deed permits.

(2) The person responsible for the register must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming units require the unitholder to surrender that document.

(3) [deleted]

(4) Bearer certificates may not be issued for AUTs or ACSs.

### Conversion of units

#### 6.4.8

Where there is more than one class of units offered for issue or sale, the unitholder has a right to convert from one to the other, provided that doing so would not contravene any provision in the prospectus.
Plan registers

(1) The ACD and any other directors of an ICVC or the person responsible for the register of an AUT or an ACS may arrange for a plan register to be established and maintained.

(2) Where payments are made out of scheme property to establish and maintain a plan register, plan investors must be treated as unitholders for the purposes of COLL 4.3 to COLL 4.5 and COLL 6.4.4 R (Register: general requirements and contents).
6.5 Appointment and replacement of the authorised fund manager and the depositary

Application

6.5.1 This section applies in accordance with COLL 6.5.2 R (Table of application).

6.5.2 Table of application

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Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

6.5.2A COLL 6.6A and COLL 6.6B set out additional FCA rules and guidance applicable to the authorised fund manager and depositary of a UCITS scheme in relation to the appointment and duties of the depositary.

Appointment of an ACD

6.5.3 (1) The directors (or director) of an ICVC must take all practicable steps to ensure the ICVC has at all times as its ACD a person who is qualified to act as ACD.
(2) If the ICVC ceases to have any director, the depositary must exercise its powers, under the OEIC Regulations, to appoint a person to be an ACD of the ICVC.

(3) For an ICVC that holds annual general meetings under the OEIC Regulations, the appointment of an ACD (other than the first ACD), under (1) or (2), must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 months from the date the appointment takes effect, unless the appointment has been approved by a resolution of the unitholders before the close of that annual general meeting or expiration of that 12 month period (as the case may be).

(4) An ACD must not voluntarily terminate its appointment as ACD unless the termination is effective at the same time as the commencement of the appointment of a successor ACD.

(5) (a) In the event of:
   (i) any person becoming or ceasing to be a director;
   (ii) the appointment of an ACD being terminated;
   (iii) a new ACD being appointed; or
   (iv) a corporate director (including the ACD) becoming aware of any change of its controller;
   the FCA must immediately be notified in accordance with (b).

   (b) In the case of:
   (i) (a)(i), by the ACD;
   (ii) (a)(ii), by the ACD whose appointment is being terminated;
   (iii) (a)(iii), by the new ACD; and
   (iv) (a)(iv), by the corporate director concerned.

Termination of appointment of an ACD

(1) The appointment of an ACD terminates immediately upon it ceasing to be a director.

(2) The appointment of an ACD terminates if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of directors of the ICVC, is given to the ACD.

(3) If there is no director other than the ACD, the appointment of the ACD terminates if a notice of termination of that appointment is given by the depositary to the ACD and to the ICVC, following any of the following events:
   (a) the calling of a meeting to consider a resolution for winding up the ACD;
   (b) an application being made to dissolve the ACD or to strike it off the Register of Companies;
   (c) the presentation of a petition for the winding up of the ACD;
   (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the ACD’s creditors;
(e) the appointment of a receiver to the ACD (whether an administrative receiver or a receiver appointed over particular property);

(f) anything equivalent to (a) to (e) above occurring in respect of the ACD in a jurisdiction outside the United Kingdom.

(4) Any termination under (2) or (3) takes effect when the notice is given, or on any subsequent time for its effect stated in the notice, or, if later, the time at which the termination is permitted to take effect under regulation 21 of the OEIC Regulations (The Authority’s approval for certain changes in respect of a company).

(5) The depositary must (unless the termination takes effect at the same time as the appointment of a successor ACD) ensure that the unitholders are informed of the termination of the appointment of an ACD.

(6) The depositary is entitled to be reimbursed out of the scheme property for its out of pocket expenses in complying with (5).

Other directors

6.5.5 (1) Any directors of an ICVC other than the ACD must exercise reasonable care to ensure that the ACD undertakes the responsibilities allocated under COLL 6.6.3 R (1) (Functions of the authorised fund manager) in a competent manner and the ACD must give those directors the information and explanations they consider necessary for this purpose.

(2) A director of an ICVC must not appoint an alternate director.

(3) When there is no person acting as ACD, the directors of an ICVC have the functions of an ACD under COLL 6.6.3 R (1), but this does not affect the powers of the directors under COLL 6.6.15 R (Committees and delegation).

(4) When (3) applies, the directors must retain the services of one or more authorised persons to assist them in performing the functions referred to in COLL 6.6.3 R (1) and COLL 6.6.3 R (2).

ICVC without a director

6.5.6 If the ICVC ceases to have any directors, the depositary may:

(1) retain the services of an authorised person to carry out the functions referred to in COLL 6.6.3 R (3)(a) and (b); or

(2) manage the scheme property itself on behalf of the ICVC until a director is appointed or the winding up of the ICVC is commenced provided it is not prohibited from doing so by any law or rule.

Replacement of an authorised fund manager of an AUT or ACS

6.5.7 (1) The authorised fund manager of an AUT or ACS is subject to removal by written notice by the depositary upon any of the following events:
(a) the calling of a meeting to consider a resolution for winding up the authorised fund manager;
(b) an application being made to dissolve the authorised fund manager or to strike it off the Register of Companies;
(c) the presentation of a petition for the winding up of the authorised fund manager;
(d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the authorised fund manager’s creditors;
(e) the appointment of a receiver to the authorised fund manager (whether an administrative receiver or a receiver appointed over particular property);
(f) anything equivalent to (a) to (e) above occurring in respect of the authorised fund manager in a jurisdiction outside the United Kingdom;
(g) the depositary forming the reasonable opinion, and stating in writing, that a change of authorised fund manager is desirable in the interest of unitholders;
(h) a resolution of unitholders being passed to remove the authorised fund manager; or
(i) the unitholders of three quarters in value of all of the units then in issue (excluding units held or treated as held by the authorised fund manager or by any associate of the authorised fund manager) making a request in writing to the depositary that the authorised fund manager should be removed.

(2) On receipt of a notice by the depositary under (1), the authorised fund manager of the AUT or ACS ceases to be the authorised fund manager; and the depositary must by deed appoint another person eligible under the Act to be the authorised fund manager of the AUT or ACS upon and subject to that other entering into such deed or deeds as the depositary may require.

(3) If the name of the AUT or ACS contains a reference to the name of the former authorised fund manager, the former authorised fund manager is entitled to require the new authorised fund manager and the depositary immediately on receipt of a notice under (1) to propose a change in the name of the AUT or ACS.

Retirement of an authorised fund manager of an AUT or ACS

(1) The authorised fund manager of an AUT or ACS has the right to retire in favour of another person eligible under the Act and approved in writing by the depositary upon:
   (a) the retiring authorised fund manager appointing that person by deed as authorised fund manager in its place and assigning to that person all its rights and duties as such a authorised fund manager; and
   (b) the new authorised fund manager entering into such deeds as the depositary reasonably considers necessary or desirable to be entered into by that person in order to secure the due
(2) Upon retirement, the retiring authorised fund manager:
(a) subject to (3), is released from all further obligations under the rules in this sourcebook and under the trust deed or contractual scheme deed; and
(b) may retain any consideration paid to it in connection with the change without having to account for it to any unitholder.

(3) Sub-paragraph (2)(a) does not affect the rights of the depositary or any other person in respect of any act or omission on the part of the retiring authorised fund manager before his retirement.

Consequences of removal or retirement of an authorised fund manager of an AUT or ACS

(1) Upon the removal or retirement of the authorised fund manager, the removed or retiring authorised fund manager of an AUT or ACS:
(a) is entitled to be recorded in the register for those units continued to be held or treated as held by it as principal; and
(b) may require the depositary to issue to it a certificate for those units (if not previously issued).

(2) Paragraph (1) is subject to any restriction in the prospectus relating to the permitted categories of unitholders.

Retirement of the depositary

(1) The depositary of an authorised fund may not retire voluntarily except upon the appointment of a new depositary.

(2) The depositary of an authorised fund must not retire voluntarily unless, before its retirement, it has ensured that the new depositary has been informed of any circumstance of which the retiring depositary has informed the FCA.

(3) When the depositary of an authorised fund wishes to retire or ceases to be an authorised person, the authorised fund manager may, subject to 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) appoint another person eligible to be the depositary in its place.
6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

Application

6.6.1 Subject to (2), this section applies in accordance with COLL 6.6.2 R (Table of application).

Where a scheme is a regulated money market fund, COLL 6.6.3 R and COLL 6.6.14 R apply to the authorised fund manager and depositary of that scheme to the extent the provisions are consistent with the requirements of the Money Market Funds Regulation.

Table of application

6.6.2 This table belongs to COLL 6.6.1 R.

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Notes:  
(1) “x” means “applies”, but not every paragraph in every rule will necessarily apply.  
(2) * COLL 6.6.3A Rand COLL 6.6.3B R only apply to authorised contractual scheme managers of ACSs.  
(3) * COLL 6.6.5AR and COLL 6.6.5BG only apply to ACDs of ICVCs which are umbrellas and authorised contractual scheme managers of co-ownership schemes which are umbrellas.  
(4) * COLL 6.6.15AR R has a special application as set out in COLL 6.6.15AR (1).  
(5) COLL 6.6.20R to COLL 6.6.27R have a special application as set out in COLL 6.6.19R.  
(6) *COLL 6.6.3CR, COLL 6.6.3DG, COLL 6.6.3ER and COLL 6.6.3FR apply only to the authorised fund manager of a FIIA.
Functions of the authorised fund manager

(1) The authorised fund manager must manage the scheme in accordance with:

   (a) the instrument constituting the fund;
   (b) the applicable rules;
   (c) the most recently published prospectus;
   (d) for an ICVC, the OEIC Regulations; and
   (e) where applicable, the Money Market Funds Regulation.

(2) The authorised fund manager must take such steps as necessary to ensure compliance with the rules that impose obligations upon the ICVC.

(3) The authorised fund manager must:

   (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
   (b) instruct the depositary in writing how rights attaching to the ownership of the scheme property are to be exercised, but not where COLL 6.6.13 R (2) (Exercise of rights in respect of the scheme property) applies; and
   (c) take action immediately to rectify any breach of COLL 6.3 and, where the breach relates to the incorrect pricing of units or to the late payment in respect of the issue of units, the rectification must, (unless the depositary otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of money:

      (i) by the authorised fund manager to unitholders and former unitholders;
      (ii) by the ACD to the ICVC;
      (iii) by the ICVC to the ACD;
      (iv) by the authorised fund manager to the depositary of the AUT or ACS; or
      (v) by the depositary (for the account of the AUT or ACS) to the authorised fund manager.

(4) Rectification under (3)(c) need not, unless the depositary so directs, extend to any such reimbursement or payment where it appears to the depositary such breach, is of minimal significance.
Functions of the authorised contractual scheme manager in relation to ACS units

6.6.3A  R

(1) The authorised contractual scheme manager of an authorised contractual scheme which is a UCITS scheme or a non-UCITS retail scheme must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a:

(a) professional ACS investor; or
(b) large ACS investor; or
(c) person who already holds units in the scheme.

(2) The authorised contractual scheme manager of an authorised contractual scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder, unless that person meets the criteria within (1)(a) to (c).

(3) The authorised contractual scheme manager will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Redemption of ACS units by an authorised contractual scheme manager

6.6.3B  R

The authorised contractual scheme manager of an authorised contractual scheme must redeem units in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in COLL 6.6.3AR (1)(a) to (c).

Additional functions of an authorised fund manager of a FIIA

6.6.3C  R

The authorised fund manager of a FIIA must establish, implement and maintain an adequate liquidity management contingency plan for exceptional circumstances which sets out:

how the authorised fund manager will respond to a liquidity risk crystallising;

the range of liquidity tools and arrangements which it may deploy in such exceptional circumstances, any operational challenges associated with the use of such tools and the likely consequences for investors;

the procedures for working with the depositary in the event the authorised fund manager must deploy these tools and arrangements;

how the authorised fund manager will work with its delegates, such as third-party administrators, and other relevant third parties including intermediate unitholders, to:

(a) deploy the liquidity management tools and arrangements;
(b) communicate their use in a timely way to unitholders; and
(c) implement any other part of this contingency plan;
any operational challenges likely to arise from working with relevant third parties identified at (4); and

communication arrangements for internal and external concerned parties (including the FCA, investors and the media where necessary).

Compliance with COLL 6.6.3CR may enable a full-scope UK AIFM that is an authorised fund manager of a FIIA to meet some of its obligations under article 47(1)(e) of the AIFMD level 2 regulation.

(1) The authorised fund manager of a FIIA must obtain written confirmation from any relevant third party identified in the contingency plan under COLL 6.6.3CR(4) that the third party will be able to undertake the matters specified in (2) as soon as is reasonably practicable.

(2) The matters specified for the purpose of (1) are that the relevant third party will, where necessary, be able to:

(a) deploy any liquidity management tools and arrangements on which the authorised fund manager plans to rely as part of its contingency plan;

(b) in a timely way, communicate the authorised fund manager's use of any such tools and arrangements to unitholders; and

(c) carry out any other part of the contingency plan which the authorised fund manager has identified as requiring action by that third party.

The authorised fund manager of a FIIA must provide the depositary on an ongoing basis with all relevant information it needs to comply with its obligations under COLL 6.6.4BR.

General duties of the depositary

(1) The depositary of an authorised fund must take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with:

(a) COLL 5 (Investment and borrowing powers);

(b) COLL 6.2 (Dealing);

(c) COLL 6.3 (Valuation and pricing);

(d) COLL 6.8 (Income: accounting, allocation and distribution);

(e) any provision of the instrument constituting the fund or prospectus that relates to the provisions referred to in (a) to (d); and

(e) where applicable, the provisions of the Money Market Funds Regulation relating to investment and borrowing powers, dealing, valuation and pricing, and income.

(2) The depositary must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:
(a) the authorised fund manager is adopting appropriate procedures to ensure that the price of a unit is calculated for each valuation point in accordance with COLL 6.3 or, where applicable, the Money Market Funds Regulation; and

(b) the authorised fund manager has maintained sufficient records to show compliance with COLL 6.3.

(3) The depositary, when acting in its capacity as depositary, must act solely in the interests of the unitholders.

(4) The depositary:

(a) must also take reasonable care to ensure that;

(i) the authorised fund manager considers whether or not to exercise the power provided by COLL 6.3.8 R (Dilution) and, if applicable, the rate or amount of any dilution levy or dilution adjustment that is imposed;

(ii) the authorised fund manager has in relation to (i), taken account of all factors that are material and relevant to the authorised fund manager’s decision; and

(iii) when the authorised fund manager considers whether or not to exercise the power under COLL 6.3.8 R, the authorised fund manager has acted in accordance with the restrictions imposed by that rule; and

(b) has no duty in respect of the authorised fund manager’s exercise of the discretion referred to in (a).

(5) [deleted]

(6) [deleted]

(7) [deleted]

6.6.4A [deleted]

Specific duties of a depositary: oversight of the liquidity management of a FIIA

6.6.4B The depositary of a FIIA must:

(1) regularly make its own assessment of the liquidity profile of the FIIA and the liquidity risks presented by the scheme property of a FIIA;

(2) take reasonable care to oversee the authorised fund manager’s liquidity management systems and procedures on an ongoing basis, using the assessment it has made under (1), to ensure the FIIA is managed in accordance with the following COLL rules and, in the case of a FIIA managed by a full-scope UK AIFM, the following FUND rules and provisions in the AIFMD level 2 regulation:

(a) COLL 4.2.5R(3)(pa);

(b) COLL 6.6.3CR and COLL 6.6.3ER;

(c) FUND 3.2.2R(8);
(d) [FUND 3.2.5R];
(e) [FUND 3.6.3R];
(f) article 44(1) and (2)(c) of the AIFMD level 2 regulation;
(g) articles 46 to 49 of the AIFMD level 2 regulation; and
(h) article 108 of the AIFMD level 2 regulation; and

(3) establish an escalation procedure when instances of potential non-compliance with the rules and provisions set out in paragraph (2) are identified, the details of which must be made available to the FCA upon request.

6.6.4C [R] The depositary of a FIIA managed by a small authorised UK AIFM must not delegate its functions under [COLL 6.6.4BR to one or more third parties, except in relation to supporting administrative or technical tasks that are linked to these functions.

6.6.4D [G] Subject to certain specified exceptions, the depositary of a FIIA managed by a full-scope UK AIFM is generally prohibited from delegating its functions (see in particular, [FUND 3.11.26R (Delegation: general prohibition) and [FUND 3.11.28R (Delegation: safekeeping)).

Duties of the authorised fund manager and the depositary under the general law

6.6.5 [R] (1) The duties and powers of the authorised fund manager, the directors of an ICVC and the depositary under the rules in this sourcebook and under the instrument constituting the fund are in addition to the powers and duties under the general law.

(2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the rules in this sourcebook, the instrument constituting the fund, the OEIC Regulations, or the Money Market Funds Regulation.

Duties of the ACD of an ICVC or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

6.6.5A [R] Where reasonable grounds exist for an ACD of an ICVC or an authorised contractual scheme manager of a co-ownership scheme which is an umbrella to consider that a foreign law contract entered into by the ICVC or authorised contractual scheme manager on behalf of the co-ownership scheme may have become inconsistent with the principle of limited recourse stated in the instrument constituting the fund of the ICVC or co-ownership scheme (see [COLL 3.2.6 R (22A) (ICVCs: Umbrella schemes - principle of limited recourse) and [COLL 3.2.6 R (22B) (Co-ownership schemes: Umbrella schemes - principle of limited recourse)) the ACD or authorised contractual scheme manager of the co-ownership scheme must:

(1) promptly investigate whether there is an inconsistency; and

(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.
In deciding what steps are appropriate to remedy the inconsistency, the ACD of an ICVC or the authorised contractual scheme manager of a co-ownership scheme should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

(1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or

(2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

Maintenance of records

(1) The authorised fund manager must make and retain for six years such records as enable:

(a) the scheme and the authorised fund manager to comply with the rules in this sourcebook and the OEIC Regulations; and

(b) it to demonstrate at any time that such compliance has been achieved.

(2) The authorised fund manager must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the authorised fund manager, including the classes of such units, and of the balance of any acquisitions and disposals.

(3) Where relevant, an authorised fund manager must make and retain for a period of six years a daily record of:

(a) how it calculates and estimates dilution; and

(b) its policy and method for determining the amount of any dilution levy or dilution adjustment.

(4) The authorised fund manager must on the request of the depositary immediately supply it with such information concerning the management and administration of the authorised fund as the depositary may reasonably require.
**Maintenance of capital: notification**

6.6.7 **R**  
The ACD must immediately notify the FCA in writing if the ICVC’s capital falls below the minimum or exceeds the maximum stated in the instrument of incorporation.

**Auditor: AUTs or ACSs**

6.6.8 **R**  
1. The authorised fund manager of an AUT or ACS must, upon any vacancy for the position of auditor for an AUT or ACS, with the approval of the depositary, appoint as auditor for the AUT or ACS a person qualified for appointment as auditor of an authorised person.

2. The audit fees of the auditor are determined by the authorised fund manager with the approval of the depositary.

3. The authorised fund manager of an AUT or ACS may, with the approval of the depositary, at any time, remove the auditor of an AUT or ACS; this power exists notwithstanding anything in any agreement between the persons concerned.

**Returns: AUTs**

6.6.9 **R**  
The manager of an AUT must prepare and supply to the trustee the returns required to be submitted by the trustee to HM Revenue and Customs.

**Dealings in scheme property**

6.6.10 **R**  
1. The authorised fund manager may give instructions to deal in the property of the scheme.

2. The authorised fund manager must obtain the consent of the depositary for the acquisition or disposal of immovable property.

3. Where the depositary is of the opinion that a deal in property is not within the rules in this sourcebook and the instrument constituting the fund, the depositary may require the authorised fund manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.

4. Where the depositary is of the opinion that:
   
   (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a person other than the depositary; and

   (b) the depositary cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other person;

   the authorised fund manager must, if the depositary so requests, either cancel the transaction or make a corresponding disposal.

**Duty to inform the FCA**

6.6.11 **G**  
SUP 15.3 (General notification requirements) contains rules and guidance on matters that should be notified to the FCA. Such matters include, but are not
limited to, any circumstance that the depositary becomes aware of whilst undertaking its functions or duties in COLL 6.6.4 R (1) (General duties of the depositary) and (where applicable) COLL 6.6.4BR (Specific duties of a depositary: oversight of the liquidity management of a FIIA), that the FCA would reasonably view as significant.

Control by the depositary over the scheme property

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

(a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;

(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(4) (Committees and delegation);

(c) take into its custody or under its control documents of title to the scheme property other than for transactions in derivatives or forward transactions; and

(d) ensure that any transaction in derivatives or a forward transaction is entered into so as to ensure that any resulting benefit is received by the depositary.

(2) The depositary is responsible for the collection of income due to be paid for the account of the authorised fund.

(3) The depositary must keep for six years such records as are necessary:

(a) to enable it to comply with the rules in this sourcebook; and

(b) to demonstrate that it has achieved such compliance.

(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.]

Exercise of rights in respect of the scheme property

6.6.13  
(1) The depositary must take all necessary steps to ensure that instructions given to it by the authorised fund manager for the exercise of rights attaching to the ownership of scheme property are carried out.
(2) Where the scheme property of an authorised fund contains units in any other scheme managed or otherwise operated by the authorised fund manager of the AUT or ACS or, as the case may be, by any director of the ICVC or by any associate of either, the depositary must exercise any voting rights associated with those units in accordance with what he reasonably believes to be the interests of the unitholders in the authorised fund.

Duties of the depositary and the authorised fund manager: investment and borrowing powers

6.6.14 R

(1) The authorised fund manager must avoid the scheme property being used or invested contrary to COLL 5, or any provision in the instrument constituting the fund or the prospectus as referred to in COLL 5.2.4 R (Investment powers: general), COLL 5.6.4 R (Investment powers: general) and, where the scheme is a regulated money market fund, the Money Market Funds Regulation, except to the extent permitted by (3)(b).

(2) The authorised fund manager must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).

(3) The authorised fund manager must restore compliance with COLL 5 as soon as reasonably practicable having regard to the interests of the unitholders and, in any event, within the period specified in (5) or, when applicable, (6) where:

(a) the scheme property is:

(i) used or invested contrary to COLL 5 (other than a provision excusing a failure to comply on a temporary basis); and

(ii) the contravention is beyond the control of both the authorised fund manager and the depositary; or

(b) there is a transaction (“subsequent transaction”) deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment (‘original investment’) of the scheme if:

(i) the subsequent transaction, but for this rule would constitute a breach of COLL 5; and

(ii) at the time of the acquisition of the original investment, it was reasonable for the authorised fund manager, to expect that a breach would not be caused by the subsequent transaction; and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the depositary or the authorised fund manager.

(4) Immediately upon the depositary becoming aware of any breach of any provision listed in (1), it must ensure that the authorised fund manager complies with (2).

(5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):
(a) for six months; or
(b) where the transaction in question was a transaction in derivatives or a forward transaction under COLL 5.2.20 R (Permitted transactions (derivatives and forwards)) or COLL 5.6.13 R (Permitted transactions (derivatives and forwards)), until the close of business five business days later; or
(c) where the transaction relates to an immovable, for two years.

(6) The period specified at (5)(b) is extended where:
(a) the transaction involved a delivery of a commodity, from five to twenty business days;
(b) the reason for the contravention in (3)(a) is the inability of the authorised fund manager to close out a transaction because of a limit in the number or value of transactions imposed by an eligible derivatives market, until five business days after:
   (i) the inability resulting from any such limit is removed; or
   (ii) it becomes, to the knowledge of the authorised fund manager, reasonably practicable and reasonably prudent for the transaction to be closed out in some other way.

Committees and delegation

1. The directors of an ICVC may delegate to any one or more of their number any of the directors’ powers or duties but remain responsible for the acts or omissions of any such directors.

1A. The directors of an ICVC have the power to retain the services of anyone to assist in the performance of their functions, subject to the duty of the ACD to comply with COLL 6.6.15A R.

2. [deleted]

3. [deleted]

4. The depositary of a non-UCITS retail scheme managed by a small authorised UK AIFM may delegate any function to any person save:
(a) the ICVC or any director of the ICVC or the authorised fund manager of a scheme, to assist the depositary to perform:
   (i) any function of oversight in respect of the scheme, its directors or the authorised fund manager as the case may be; or
   (ii) any function of custody or control of the scheme property;
(b) an associate of the ICVC or of any of the directors of the ICVC or of the authorised fund manager of the scheme (as the case may be) to assist the depositary to perform any function in (a)(i); or
(c) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depositary.
(5) Where a depositary retains services under (4):

(a) if it retains the services of a director of the ICVC, or an associate of such a director or its own associate, or the authorised fund manager of a scheme or that authorised fund manager’s associate, then its liability for those services shall remain unaffected; and

(b) in any other case, it will not be held responsible by virtue of the rules in COLL for any act or omission of the person so retained if it can show that:

(i) it was reasonable for it to obtain assistance to perform the function in question;

(ii) the person retained was and remained competent to provide assistance in the performance of the function in question; and

(iii) it had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

(6) Where COLL 6.5.5 R (4) (Other directors) applies, the directors have, in respect of the functions of the ACD under COLL 6.6.3 R (Functions of the authorised fund manager), the same rights and responsibilities as for an ACD under this rule and COLL 6.6.15A R.

6.6.15A R

(1) This rule applies to:

(a) an authorised fund manager of an AUT, ACS or an ICVC where such AUT, ACS or ICVC is a UCITS scheme; and

(aa) a small authorised UK AIFM that is the authorised fund manager of an AUT, ACS or an ICVC that is a non-UCITS retail scheme.

(b) [deleted]

(2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:

(a) a mandate in relation to managing investments of the scheme is not given to:

(i) the depositary; or

(ii) any other person whose interests may conflict with those of the authorised fund manager or unitholders; or

(iii) an authorised person operating from an establishment in the United Kingdom unless such person has a Part 4A permission to manage investments; or

(iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:

(A) is authorised or registered in such country for the purpose of asset management; and

(B) is subject to prudential supervision in such country;
and in addition if that person is not an a UK firm, co-operation is ensured between the FCA and the overseas regulator of that person;

(b) the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;

(c) the mandate permits the authorised fund manager to:
   (i) give further instructions to the person so retained; and
   (ii) withdraw the mandate with immediate effect when this is in the interests of the unitholders;

(d) the mandate does not prevent effective supervision of the authorised fund manager and it must not prevent the authorised fund manager from acting, or the scheme from being managed, in the best interests of the unitholders; and

(e) having regard to the nature of the functions to be carried out under the mandate, the person to whom the mandate is given must be qualified and capable of undertaking those functions.

(3) Subject to the provisions of the OEIC Regulations and ■ COLL 6.6.15 R (1) and ■ (1A), where services are retained under (2), the responsibility which the authorised fund manager had in respect of such services prior to that retention of services will remain unaffected.

[Note: article 13 of the UCITS Directive]

Delegation: guidance

(1) Directors of an ICVC, authorised fund managers and depositaries should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.

(2) ■ SUP 15.8.6 R (Delegation by UCITS management companies) requires the authorised fund manager of a UCITS scheme to inform the FCA before it delegates one of its duties to another person.

(3) For the purpose of ■ COLL 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the FCA has entered into a co-operation agreement providing for the exchange of information with the relevant overseas regulator which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that UCITS schemes, management companies and depositaries cannot be individually identified, without prejudice to cases covered by criminal law.

(4) ■ COLL 6.6B sets out the FCA’s rules and guidance that apply to a depositary of a UCITS scheme seeking to delegate any of its functions.
Conflicts of interest

6.6.17  The authorised fund manager, any other director of an ICVC and the depositary must take reasonable care to ensure that a transaction within (a) to (f) is not carried out on behalf of the scheme:

(a) putting cash on deposit with an affected person unless that person is an eligible institution or an approved bank and the arm's length requirement in (2) is satisfied;

(b) lending money by an affected person to, or for the account of, the scheme, unless the affected person is an eligible institution or an approved bank, and the arm's length requirement in (2) is satisfied;

(c) the dealing in property by an affected person, to, or with, the scheme (or the depositary for the account of the scheme), unless (3) applies;

(d) the vesting of property (other than cash) by an affected person in the scheme or the depositary for the account of the scheme against the issue of units in the scheme, unless:

   (i) (3) applies; or

   (ii) the purpose of the vesting is that the whole or part of the property of a body corporate or a collective investment scheme becomes the first property of the scheme and the unitholders of shares or units in the body corporate or collective investment scheme become the first unitholders in the scheme;

(e) the acquisition of scheme property by an affected person from the scheme (or the depositary acting for the account of the scheme), unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies, or unless (3) applies; and

(f) transactions within COLL 5.4 (Stock lending) by an affected person with, or in relation to, the scheme unless the arm's length requirement in (2) is satisfied.

(2) Any transaction in (1)(a),(b) or (f) must be at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm's length between the affected person and an independent party.

(3) There is no breach of (1)(c), (d) or (e) if the transaction meets the requirements of (4) (best execution on-exchange), (5) (independent valuation) or (6) (arm's length transaction).

(4) There is best execution on-exchange for the purposes of (3) if:

(a) the property is an approved security or an approved derivative;

(b) the transaction is effected under the rules of the relevant exchange with or through a person who is bound by those rules;

(c) there is evidence in writing of the effecting of the transaction and of its terms; and

(d) the authorised fund manager has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the scheme.
(5) There is independent valuation for the purposes of (3) if:
   (a) the value of the property is certified in writing for the purpose of the transaction by a person approved by the depositary as:
      (i) independent of any affected person; and
      (ii) qualified to value property of the relevant kind; and
   (b) the depositary is of the opinion that the terms of the transaction are not likely to result in any material prejudice to unitholders.

(6) There is an arm's length transaction for the purposes of (3) if:
   (a) paragraph (4)(a) is not satisfied;
   (b) it is not reasonably practicable to obtain an independent valuation under (5); and
   (c) the depositary has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in (2).

Conflicts of interest: guidance

6.6.18 [deleted]

(1) [deleted]

(2) Regulation 44 of the OEIC Regulations (Invalidity of certain transactions involving directors) is relevant to the application of COLL 6.6.17 R.

Application of assessment of value and independent director rules

6.6.19 COLL 6.6.20R to COLL 6.6.26G apply to:

(1) an authorised fund manager (other than one which is managing an authorised fund under a temporary permission) of an AUT, ACS or ICVC.

(2) [deleted]

Assessment of value

6.6.20 (1) An authorised fund manager must conduct an assessment at least annually for each scheme it manages of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders.

(2) In carrying out the assessment required by (1), the AFM must, separately for each class of units in a scheme, consider at least the matters set out in COLL 6.6.21R (Table: minimum considerations – assessment of value).

6.6.20A The authorised fund manager of a scheme with a side pocket class should note the modified application of the assessment of value rules in COLL 7.8.34R (Modified application of the assessment of value rules) and the related guidance in COLL 7.8.35G.
Table: minimum considerations – assessment of value

This table belongs to COLL 6.6.20R (Assessment of value).

Quality of service

(1) The range and quality of services provided to unitholders.

Performance

(2) The performance of the scheme, after deduction of all payments out of scheme property as set out in the prospectus (in this rule, COLL 6.6.23E and COLL 8.5.19E, “charges”). Performance should be considered over an appropriate timescale having regard to the scheme’s investment objectives, policy and strategy.

AFM costs - general

(3) In relation to each charge, the cost of providing the service to which the charge relates, and when money is paid directly to associates or external parties, the cost is the amount paid to that person.

Economies of scale

(4) Whether the AFM is able to achieve savings and benefits from economies of scale, relating to the direct and indirect costs of managing the scheme property and taking into account the value of the scheme property and whether it has grown or contracted in size as a result of the sale and redemption of units.

Comparable market rates

(5) In relation to each service, the market rate for any comparable service provided:
   (a) by the AFM; or
   (b) to the AFM or on its behalf, including by a person to which any aspect of the scheme’s management has been delegated.

Comparable services

(6) In relation to each separate charge, the AFM’s charges and those of its associates for comparable services provided to clients, including for institutional mandates of a comparable size and having similar investment objectives and policies;

Classes of units

(7) Whether it is appropriate for unitholders to hold units in classes subject to higher charges than those applying to other classes of the same scheme with substantially similar rights.

When assessing the quality of service provided under COLL 6.6.21R(1):

(1) the AFM should have regard to the quality of service it provides and the quality of service provided by any person to which any aspect of the scheme’s management has been delegated or which provides services to the AFM or on its behalf; and

(2) the AFM’s assessment of quality of service is not confined to services provided directly to unitholders but may include services undertaken on their behalf by the AFM, such as consideration of the quality of the investment process used to make decisions about managing the scheme property.

Failure by an AFM to take sufficient steps to address any instance where a scheme’s charges are not justified in the context of the overall value
delivered to unitholders may be relied on as tending to establish contravention of COLL 6.6A.2R, COBS 2.1.1R or COBS 2.1.4R as applicable.

6.6.24

(1) ■ COLL 6.6A.2R applies to AFMs of UCITS schemes and in broad terms requires AFMs to act in the best interests of unitholders. In particular, ■ COLL 6.6A.2R(1) requires AFMs to ensure unitholders are treated fairly, ■ COLL 6.6A.2R(5) requires AFMs to act in such a way as to prevent undue costs being charged to any scheme it manages and its unitholders and ■ COLL 6.6A.2R(6)(b) requires an AFM to act solely in the interests of the scheme and its unitholders.

(2) ■ COBS 2.1.1R is the clients best interests rule, ■ COBS 2.1.4R(2) requires a full-scope UK AIFM to act in the best interests of the AIF it manages or the investors of the AIF it manages and the integrity of the market and ■ COBS 2.1.4R(3) requires the AFM to treat all investors fairly.

Independent directors

6.6.25

(1) An authorised fund manager must ensure that at least one quarter of the members of its governing body are independent natural persons. If the AFM’s governing body comprises fewer than eight members, the AFM must instead ensure that at least two of its members are independent natural persons.

(2) The authorised fund manager, in appointing an independent member of its governing body, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member’s judgement.

(3) The authorised fund manager must take reasonable steps to ensure that independent members appointed to its governing body have sufficient expertise and experience to be able to make judgements on whether the AFM is managing each scheme in the best interests of unitholders.

(4) (a) Independent members of an AFM’s governing body must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.

(b) If an independent member is appointed to more than one governing body within an AFM’s group, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a person who served as an independent director of an AFM’s governing body before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an AFM’s governing body until five years have elapsed from the end of the ten year period referred to in (4).

(6) The terms of employment on which independent members are appointed must be such as to secure their independence.
6.6.26 (1) The role of the independent members should include providing input and challenge as part of the AFM’s assessment of value in accordance with COLL 6.6.20R. Independent members may be tasked with additional responsibilities, taking into consideration remuneration and conflict of interest rules.

(2) A member of an AFM’s governing body is unlikely to be considered independent if any of the following circumstances exist:

(a) the person is an employee of the AFM or of an affiliated company or paid by them for any role (other than as an independent member of the governing body of an affiliated company or of a body exercising an independent governance function within the AFM’s group) including participating in the AFM’s share option or performance-related pay scheme; or

(b) the person has been an employee of the AFM or of an affiliated company within the AFM’s group (other than having been an independent member of the governing body of an affiliated company or of a body exercising an independent governance function within the AFM’s group) or of any person to which collective portfolio management of the scheme has been delegated, within the five years preceding their appointment to the governing body; or

(c) the person has, or had within the three years preceding their appointment, a material business relationship of any description with the AFM or with an affiliated company or with any person to which collective portfolio management of the scheme has been delegated, either directly or indirectly; or

(d) the person has received any sort of remuneration from the AFM’s group (other than as an independent member of the governing body of an affiliated company of the AFM or of a body exercising an independent governance function within the AFM’s group) within the five years preceding their appointment; or

(e) the person has a close relative who is an officer or other senior employee of the AFM or a company within the AFM’s group.

(3) The expertise and experience required under COLL 6.6.25R(3) may have been gained through professional experience, public service, academia or otherwise, and does not need to relate to the financial services industry.

(4) The effect of COLL 6.6.25R(6) is that a person who serves on the governing body should be subject to appropriate contractual terms so that, when acting in the capacity of an independent member of the governing body, they are free to act in the interests of unitholders and should be able to do so without breaching their terms of employment.

(5) An AFM should fill any vacancies that arise within the required number of independent members on its governing body as soon as possible and, in any event, within six months.

(6) An AFM should consider indemnifying the independent members of its governing body against liabilities incurred while fulfilling their duties as such members.
Allocation of responsibility for compliance to an approved person

(1) An AFM must allocate responsibility for ensuring its compliance with COLL 6.6.20R, COLL 6.6.25R, and, as applicable, COLL 6.6A.2R or COBS 2.1.4R to an approved person.

(2) Where the chair of the AFM's governing body is an approved person, the AFM must allocate the responsibility set out in (1) to that person.
6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

6.6A.1 (1) This section applies to:
   
   (a) an authorised fund manager of a UCITS scheme, a depositary, an ICVC and any other director of an ICVC which is a UCITS scheme.
   
   (b) [deleted]

   (2) [deleted]

   (3) [deleted]

Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholder

6.6A.2 An authorised fund manager of a UCITS scheme must:

   (1) ensure that the unitholders of any such scheme it manages are treated fairly;

   (2) refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders;

   (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;

   (4) (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each scheme it manages, in order to comply with the duty to act in the best interests of the unitholders; and

   (b) be able to demonstrate that the investment portfolio of each such scheme it manages is accurately valued;

   (5) act in such a way as to prevent undue costs being charged to any such scheme it manages and its unitholders; and

   (6) in carrying out its functions act:

   (a) honestly, fairly, professionally and independently; and

   (b) solely in the interests of the UCITS scheme and its unitholders.
6.6A.3  (1) Examples of malpractices for the purposes of COLL 6.6A.2R (3) would include market timing and late trading, which may have detrimental effects on unitholders and may undermine the functioning of the market.

(2) Examples of undue costs for the purposes of COLL 6.6A.2R (5) would include unreasonable charges and excessive trading, taking into account the scheme’s investment objectives and policy.

6.6A.4  An authorised fund manager of a UCITS scheme must:

(1) ensure a high level of diligence in the selection and ongoing monitoring of scheme property, in the best interests of the scheme and the integrity of the market;

(2) ensure it has adequate knowledge and understanding of the assets in which any scheme it manages is invested;

(3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any UCITS scheme it manages are carried out in compliance with the objectives and the investment strategy and risk limit system of the scheme;

(4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:

(a) formulate forecasts and analyse the investment’s impact on the portfolio composition, liquidity and risk and reward profile of the scheme before carrying out the investment; and

(b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;

(5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
(6) before entering into any arrangements of the type referred to in (5):
   (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
   (b) establish methods for the on-going assessment of the standard of performance of the third party.

[Note: article 23 of the UCITS implementing Directive]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

The authorised fund manager of a UCITS scheme must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14(1)(e) of the UCITS Directive]

Strategies for the exercise of voting rights

(1) An authorised fund manager of a UCITS scheme must develop adequate and effective strategies for determining when and how voting rights attached to ownership of scheme property, are to be exercised, to the exclusive benefit of the scheme concerned.

(2) The strategy referred to in (1) must determine measures and procedures for:
   (a) monitoring relevant corporate events;
   (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant scheme; and
   (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

(3) An authorised fund manager of a UCITS scheme must make available to unitholders:
   (a) a summary description of the strategies referred to in (1); and
   (b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[Note: article 21 of the UCITS implementing Directive]

Appointment of a single depositary

An authorised fund manager of a UCITS scheme must (for each scheme it manages) ensure that:

(1) a single depositary is appointed; and

(2) the assets of the UCITS scheme are entrusted to the depositary for safekeeping in accordance with § COLL 6.6B.18R and § COLL 6.6B.19R.

[Note: article 22(1) and (5) of the UCITS Directive]
Eligible depositaries for UCITS schemes

An authorised fund manager must ensure that the depositary it appoints under COLL 6.6A.7R is a firm established in the United Kingdom that has the Part 4A permission of acting as trustee or depositary of a UK UCITS and is one of the following:

1. a national central bank; or
2. a credit institution; or
3. a firm which:
   a. [deleted]
   b. either:
      i. is a MiFID investment firm; or
      ii. is an investment management firm to which IPRU(INV) 5 applies; and
   c. satisfies the non-bank depositary organisational requirements in COLL 6.6B.11R.

[Note: article 23(2)(a), (b) and (c) (first sentence) of the UCITS Directive]

For a depositary to be established in the United Kingdom, it must have its registered office in the United Kingdom.

[deleted]

Written contract

(1) An authorised fund manager of a UCITS scheme must ensure that the appointment of the depositary is evidenced by a written contract.
(2) The contract must regulate the flow of information deemed necessary to allow the depositary to perform its functions for the scheme.

[Note: article 22(2) of the UCITS Directive]

6.6A.12 The written contract referred to in 6.6A.11R may cover more than one scheme.

6.6A.13 Article 2 of the UCITS level 2 regulation sets out the minimum information that must be included in the written contract between:

1. (a) the authorised fund manager of a UCITS scheme; and
   (b) [deleted]

2. the depositary.
6.6B UCITS depositaries

Application

6.6.1 R

This section applies to the depositary of a UCITS scheme managed by an authorised fund manager.

General obligations

6.6.2 R

A depositary in carrying out its functions must act:

1. honestly, fairly, professionally and independently; and
2. solely in the interests of the UCITS scheme and its unitholders.

[Note: article 25(2) first paragraph of the UCITS Directive]

Conflicts of interest: depositaries

6.6.3 R

A depositary must not carry out activities with regard to the UCITS scheme, or the authorised fund manager, acting on behalf of the scheme, that may create conflicts of interest between the scheme, the unitholders in the scheme or the authorised fund manager and itself, unless:

1. the depositary has properly identified any such potential conflicts of interest;
2. the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and
3. the potential conflicts of interest are properly managed, monitored and disclosed to the unitholders of the scheme.

[Note: article 25(2) second paragraph of the UCITS Directive]

Eligible depositaries for UCITS schemes

6.6.4 G

A depositary of a UCITS scheme must be a firm established in the United Kingdom that has the Part 4A permission of acting as trustee or depositary of a UK UCITS.

6.6.5 G

COLL 6.6A.8R sets out the categories of firms that may be appointed by an authorised fund manager as the depositary of a UCITS scheme.
For a depositary to be established in the United Kingdom, it must have its registered office in the United Kingdom.

**Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements**

A depositary appointed in accordance with COLL 6.6A.8R(3) needs to satisfy the capital requirements in either:

1. IPRU(INV) 5; or
2. MIFIDPRU

[Editor’s note: this requirement has been moved to MIFIDPRU 4.4.6R.]

**Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): organisational requirements**

A depositary appointed under COLL 6.6A.8R(3) must:

1. ensure that it has the infrastructure necessary to keep in custody UCITS custodial assets that can be registered in a financial instruments account opened in the depositary’s books;
2. establish adequate policies and procedures sufficient to ensure the compliance of the depositary, including its managers and employees, with its obligations under the regulatory system;
3. have:
   - sound administrative and accounting procedures and internal control mechanisms;
   - effective procedures for risk assessment; and
   - effective control and safeguard arrangements for information processing systems;
4. maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
5. arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable the competent authority to monitor the firm’s compliance with the requirements under the regulatory system;
(6) take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures to perform its depositary activities;

(7) ensure that all members of its management body and senior management at all times:
   (a) are of sufficiently good repute; and
   (b) possess sufficient knowledge, skills and experience;

(8) ensure that its management body possesses adequate collective knowledge, skills and experience to be able to understand the depositary’s activities, including the main risks; and

(9) require each member of its management body and senior management to act with honesty and integrity.

[Note: article 23(2)(c) (second sentence) of the UCITS Directive]

6.6B.12 A firm’s attention is also drawn to the organisational requirements in SYSC. The rules and guidance in SYSC apply to a depositary appointed under COLL 6.6A.8R(3), in accordance with the application provisions summarised in SYSC 1.1A (Application) and provided in detail in SYSC 1 Annex 1.

Written contract

(1) A depositary must ensure that its appointment as depositary of a UCITS scheme is evidenced by a written contract.

(2) The contract must regulate the flow of information deemed necessary to allow the depositary to perform its functions for the scheme.

[Note: article 22(2) of the UCITS Directive]

6.6B.13 The written contract referred to in COLL 6.6B.13R may cover more than one UCITS scheme.

6.6B.14 Article 2 of the UCITS level 2 regulation sets out the minimum information that must be included in the written contract between the authorised fund manager and the depositary.

Depositary functions: oversight

(1) ensure that the sale, issue, repurchase, redemption and cancellation of units of the scheme are carried out in accordance with:
(a) the applicable national law;
(b) the *instrument constituting the fund*;
(c) the prospectus; and
(d) COLL 6.2 (Dealing);

(2) ensure that the price of the *units* of the *UCITS* is calculated in accordance with:
(a) the applicable national law;
(b) the *instrument constituting the fund*;
(c) the prospectus; and
(d) COLL 6.3 (Valuation and pricing);

(3) carry out the instructions of the *authorised fund manager*, unless they conflict with:
(a) the applicable national law; or
(b) the *instrument constituting the fund*; or
(c) the prospectus; or
(d) COLL 5 (Investment and borrowing powers);

(4) ensure that, in transactions involving the assets of the *UCITS scheme*, any consideration is remitted to the scheme within the usual time limits; and

(5) ensure that the income of the *UCITS scheme* is applied in accordance with:
(a) the applicable national law;
(b) the *instrument constituting the fund*;
(c) the prospectus; and
(d) COLL 6.8 (Income: accounting, allocation and distribution).

[Note: article 22(3) of the *UCITS Directive*]

**Depositary functions: cash monitoring**

The depositary must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:

(1) all payments made by, or on behalf of, investors upon the subscription of *units* of the scheme have been received;

(2) all cash of the scheme has been booked in cash accounts which are:
(a) opened in the name of:
   (i) the scheme; or
   (ii) the *authorised fund manager*, acting on behalf of the scheme; or
   (iii) the depositary acting on behalf of the scheme; and

(b) at:
(i) a central bank; or
(ii) a CRD credit institution; or
(iii) a bank authorised in a country other than an EEA State; and
(c) maintained in accordance with the principles in article 2
(safeguarding of client financial instruments and funds) of the
MiFID Delegated Directive; and

(3) where cash accounts are opened in the name of the depositary acting
on behalf of the scheme in accordance with (2)(a)(iii), the depositary
must ensure that no cash of the entity referred to in (2)(b), and none
of the depositary’s own cash, is booked on such accounts.

[Note: article 22(4) of the UCITS Directive]

Depositary functions: safekeeping of financial instruments

6.6.18

(1) The depositary of a UCITS scheme must hold in custody all UCITS
custodial assets of the scheme.

(2) The depositary must ensure that all UCITS custodial assets that can be
registered in a financial instruments account:
(a) are registered in the depositary’s books within segregated
accounts opened in the name of:
(i) the UCITS scheme; or
(ii) the authorised fund manager, acting on behalf of the
scheme; and
(b) can be clearly identified as belonging to the UCITS scheme at all
times in accordance with:
(i) the applicable law; and
(ii) the applicable provisions in CASS 6.

[Note: article 22(5)(a) of the UCITS Directive]

Depositary functions: safekeeping of other assets

6.6.19

The depositary must, for UCITS scheme property other than UCITS custodial
assets:

(1) verify that the UCITS scheme or the authorised fund manager, acting
on behalf of the scheme, is the owner of the assets based:
(a) on information or documents provided by the authorised fund
manager; and
(b) where available, on external evidence; and

(2) maintain, and keep up to date, a record of those assets for which it is
satisfied that the UCITS scheme or the authorised fund manager,
acting on behalf of the scheme, is the owner.

[Note: article 22(5)(b) of the UCITS Directive]
Inventory of assets

6.6B.20 R
The depositary must provide a comprehensive inventory of all the assets comprising the scheme property of the UCITS scheme to the authorised fund manager on a regular basis.

[Note: article 22(6) of the UCITS Directive]

Re-use of assets

6.6B.21 R
(1) The depositary must not re-use UCITS custodial assets except:
   (a) where permitted under § COLL 5.4 (stock lending); and
   (b) when carrying out the instructions of the authorised fund manager on behalf of the scheme.

(2) Re-use of the UCITS custodial assets comprises any transaction in relevant scheme property including, but not limited to, transferring, pledging, selling and lending.

[Note: article 22(7) first paragraph of the UCITS Directive]

Limitation on delegation

6.6B.22 R
A depositary must not delegate its oversight function in § COLL 6.6B.16R or its cash monitoring function in § COLL 6.6B.17R to a third party.

[Note: article 22a(1) of the UCITS Directive]

6.6B.23 G
The use of services provided by securities settlement systems, as specified in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 or similar services provided by securities settlement systems in other countries, does not constitute a delegation by the depositary of its functions for the purposes of § COLL 6.6B.22R.

[Note: article 22a(4) of the UCITS Directive]

6.6B.24 G
(1) (a) If a depositary performs part of its functions through a branch in an EEA State, this is not a delegation by the depositary of its functions to a third party.

   (b) This is because ‘third party’ in § COLL 6.6B.22R means any party that is not part of the same legal entity as the depositary.

(2) [deleted]

(3) (a) A depositary that performs part of its functions through a branch in an EEA State should ensure that those arrangements do not impede the depositary’s ability to meet the threshold conditions.

   (b) (i) In particular, the arrangements should not impede the FCA’s ability to supervise the depositary effectively.

   (ii) For example, the FCA’s ability to supervise the depositary might be impeded if the depositary performed tasks other than administrative and supporting tasks from its branch or registered office in another EEA State.
A depositary may delegate the functions in COLL 6.6B.18R and COLL 6.6B.19R to one or more third parties if:

1. the tasks are not delegated with the intention of avoiding the requirements of the UCITS Directive, as implemented in this chapter;

2. the depositary can demonstrate that there is an objective reason for the delegation;

3. the depositary:
   - has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
   - continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
     - of any third party to whom it has delegated parts of its tasks; and
     - of the arrangements of that third party in respect of the matters delegated to it; and

4. the depositary ensures that the third party delegate meets the following conditions at all times:
   - the third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS scheme that have been entrusted to it;
   - (subject to COLL 6.6B.26R) for custody tasks in relation to UCITS custodial assets, the third party is subject to:
     - effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
     - an external periodic audit to ensure that the financial instruments remain in its custody;
   - the third party segregates the assets of the depositary’s clients from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
   - the third party takes all necessary steps to ensure that in the event of insolvency of the third party, UCITS custodial assets held in custody by the third party are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
   - the third party complies with the general obligations and prohibitions relating to the depositary in:
     - COLL 6.6B.2R (General obligations);
Delegation: third countries

A depositary may delegate custody tasks in relation to UCITS custodial assets to an entity in another country even though that entity does not satisfy the conditions in COLL 6.6B.25R(4)(b)(i) if:

1. the law of that country requires those UCITS custodial assets to be held in custody by a local entity;
2. no local entity satisfies the conditions in COLL 6.6B.25R(4)(b)(i);
3. the depositary delegates its functions to such a local entity only:
   (a) to the extent required by the law of that country; and
   (b) for as long as there is no local entity that satisfies the delegation conditions in COLL 6.6B.25R(4)(b)(i);
4. the investors of the relevant UCITS scheme are informed before their investment:
   (a) that such delegation is required due to legal constraints in the other country;
   (b) of the reasons as to why the delegation is necessary; and
   (c) of the risks involved in such a delegation; and
5. the authorised fund manager, acting on behalf of the UCITS scheme, has consented to the delegation arrangements before they become effective.

Delegation: sub-delegation

A depositary must ensure that a third party to whom the depositary has delegated functions under COLL 6.6B.25R does not, in turn, sub-delegate those functions unless the delegate complies with the same requirements that apply to the depositary, with any necessary changes, in relation to the delegation by the depositary of its functions in COLL 6.6B.25R and COLL 6.6B.26R.

[Note: article 22a(3) third paragraph of the UCITS Directive]
Delegation: omnibus account

A depositary may delegate the safekeeping of assets to a third party that maintains an omnibus account for multiple UCITS schemes, provided it is a segregated common account that is segregated from the third party's own assets.

[Note: recital 22 of the UCITS Directive]

Provision of information

The requirements of SUP 2 (Information gathering by the FCA or PRA on its own initiative) apply to the depositary, under which it must enable the FCA to obtain, on request, all information that the depositary has obtained while discharging its duties and that the FCA considers necessary.

[Note: article 26a first paragraph of the UCITS Directive]

Reporting of breaches

A depositary must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions which implemented the UCITS Directive before IP completion day.

[Note: article 99d(5) of the UCITS Directive]

Subordinate measures

Articles 3 to 17 of the UCITS level 2 regulation provide detailed rules supplementing this section.
6.7 Payments

Application

6.7.1 This section applies in accordance with COLL 6.7.2 (Table of application).

Table of application

6.7.2 Table of Application. This table belongs to COLL 6.7.1 R.

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Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

6.7.3 (1) This section assists in securing the statutory objective of protecting consumers through requirements which govern the payments out of scheme property and charges imposed on investors when buying or selling units.

(2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for unitholders of any increases in charges and payments to the authorised fund manager.
(3) The prospectus should make adequate provision for payments from an authorised fund. This section:

(a) prohibits, or stipulates the conditions on which, the payments out of the scheme property can be made;
(b) requires certain payments to be conditional on disclosure in the prospectus; and
(c) governs the allocation of payments between capital and income.

Payments out of scheme property

6.7.4 R

(1) The only payments which may be recovered from the scheme property of an authorised fund are those in respect of:

(a) remunerating the parties operating the authorised fund;
(b) the administration of the authorised fund; or
(c) the investment or safekeeping of the scheme property.

(2) No payment under this rule can be made from scheme property if it is unfair to (or materially prejudices the interests of) any class of unitholders or potential unitholders.

(3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the authorised fund.

(4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of units on behalf of unitholders rather than on behalf of the authorised fund.

Payments out of scheme property: guidance

6.7.5 G

(1) Details of permissible types of payments out of scheme property are to be set out in full in the prospectus in accordance with COLL 4.2.5R (13) and COLL 4.2.5R (14) (Table: contents of the prospectus).

(2) An authorised fund manager should consider whether a payment to an affected person is unfair because of its amount or because it confers a disproportionate benefit on the affected person.

(3) COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate classes of unit that relates solely to the payments that may be taken out of scheme property.

(4) Payments to third parties as referred to in COLL 6.7.4 R (4) include payments to platform service providers and other similar platform services.

Performance fees

6.7.6 G

(1) For the authorised fund manager's periodic charge or for payments out of scheme property to the investment adviser, the prospectus may permit a payment based on a comparison of one or more aspects of the scheme property or price in comparison with fluctuations in the
value or price of property of any description or index or other factor designated for the purpose (a “performance fee”).

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

(a) [deleted]

(b) where it is made on the basis of performance of the authorised fund against any index or any other factor, that benchmark must be reasonable given the investment objectives of the authorised fund and must be consistently applied;

(c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;

(d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;

(e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and

(f) except where allowed by COLL 6.7.4 R (1), there are to be no arrangements to adjust the price or value of sale or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.

(3) In accordance with COLL 4.2.5R (13) (Table: contents of prospectus) the prospectus should contain the maximum amount or percentage of scheme property that the performance fee might represent in an annual accounting period. This disclosure should be given in plain language together with examples of the operation of the performance fee.

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.

Charges on buying and selling units

(1) No person other than the authorised fund manager may impose charges on unitholders or potential unitholders when they buy or sell units.

(2) An authorised fund manager must not make any charge or levy in connection with:

(a) the issue or sale of units except where a preliminary charge is made in accordance with the prospectus of the scheme which must be:

(i) a fixed amount; or

(ii) calculated as a percentage of the price of a unit; or

(iii) calculated as a percentage of the amount being subscribed; or
(b) the redemption or cancellation of units, except a redemption charge made in accordance with the prospectus current at the time the relevant units were purchased by the unitholder.

(3) This rule is subject to COLL 6.3.8 R (Dilution) and COLL 11.3.11 R (Obligations of the master UCITS).

Charges on buying and selling units: guidance

(1) To introduce a new charge for the sale or redemption of units, or any new category of remuneration for its services or increase the rate stated in the prospectus, the authorised fund manager will need to comply with COLL 4.2.5 R (Table: contents of prospectus) and COLL 4.3 (Approvals and notifications).

(2) A redemption charge may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the unitholder has held the units or be calculated on the basis of the unit price performance of the units. However any redemption charge should not be such that it could be reasonably regarded as restricting any right of redemption.

(3) The prospectus should contain a statement as to the determination of the order in which units which have been acquired at different times by a unitholder are to be taken to be redeemed or cancelled for the purpose of the imposition of the redemption charge.

(4) (a) For a UCITS scheme, article 10(2)(a) of the KII Regulation requires the key investor information document to disclose the maximum percentage that might be deducted as an entry charge from the investor's capital commitment.

(b) Where a preliminary charge is charged as a fixed amount or is calculated as a percentage of the price of a unit, the AFM should ensure that the actual amount charged, if it were expressed as a percentage of the amount being subscribed, does not exceed the maximum percentage stated as the entry charge in the key investor information document.

(5) When a preliminary charge is calculated as a percentage of the price of a unit, the percentage amount should be added to:

(a) the price of a unit (for a single-priced authorised fund); or
(b) the issue price (for a dual-priced authorised fund).

(6) In relation to a regulated money market fund, any charges for the sale or redemption of units, and any change to such charges, should reflect the restrictions of the Money Market Funds Regulation.

Charges for the exchange of units in an umbrella

For a scheme which is an umbrella, an authorised fund manager must not make a charge on an exchange of units in one sub-fund for units in another sub-fund unless the amount of the charge is not more than the amount stated in the current prospectus.
Allocation of payments to income or capital

6.7.10 R

(1) The authorised fund manager must determine whether a payment is to be made from the income property or capital property of an authorised fund, and in doing so the authorised fund manager must:

(a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the scheme; and

(b) agree the treatment of any payment with the depositary.

(2) Where, for any class of units for any annual accounting period, the amount of the income property is less than the income distributed, the shortfall must, as from the end of that period, be charged to the capital account and must not subsequently be transferred to the income account.

Allocation of payments to income or capital: guidance

6.7.11 G

(1) Any payment as a result of effecting transactions for the authorised fund should be made from the capital property of the scheme.

(2) Other than the payments in (1), all other payments should be made from income property in the first instance but may be transferred to the capital account in accordance with COLL 6.7.10 R (1) (Allocation of payments to income or capital).

(3) For payments transferred to the capital property of the scheme in accordance with (2), the prospectus should disclose the matters in COLL 4.2.5R (14).

(4) If the authorised fund manager wishes to make a change in relation to the allocation of payments, the procedures in COLL 4.3 (Approvals and notifications) will be relevant.

Prohibition on promotional payments

6.7.12 R

(1) No payment may be made from scheme property to any person, other than a payment to the authorised fund manager permitted by the rules in COLL, for the acquisition or promotion of the sale of units in an authorised fund.

(2) Paragraph (1) does not apply to the costs an authorised fund incurs preparing and printing the key investor information document, NURS-KII document or key information document, provided the prospectus states, in accordance with COLL 4.2.5 R (13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the authorised fund manager from scheme property.

Prohibition on promotional payments: guidance

6.7.13 G

Examples of payments which are not permitted by COLL 6.7.12 R include:

(1) commission payable to intermediaries (such payments should normally be borne by the authorised fund manager);
(2) payments or costs in relation to the preparation or dissemination of financial promotions (other than costs allowed under COLL 6.7.12 R (2)).

(3) [deleted]

Movable or immovable property

An ICVC must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

Payment of liabilities on transfer of assets

(1) Where the property of an authorised fund is transferred to a second authorised fund (or to the depositary for the account of the authorised fund) in consideration of the issue of units in the second authorised fund to unitholders in the first scheme, (2) applies.

(2) The ICVC or the depositary of the ICVC, ACS or AUT as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

(a) there is nothing in the instrument constituting the fund of the authorised fund expressly forbidding the payment; and

(b) the authorised fund manager is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

Except as provided in COLL 6.3.5DR, an affected person is not liable to account to another affected person or to the unitholders of any scheme for any profits or benefits it makes or receives that are made or derived from or in connection with:

(1) dealings in the units of a scheme; or

(2) any transaction in scheme property; or

(3) the supply of services to the scheme;

where disclosure of the non-accountability has been made in the prospectus of the scheme.

Allocation of scheme property

For a scheme which is an umbrella, any assets to be received into, or any payments out of, the scheme property which are not attributable to one sub-fund only, must be allocated by the authorised fund manager between the sub-funds in a manner which is fair to the unitholders of the umbrella generally.
6.8 Income: accounting, allocation and distribution

Application

6.8.1 (1) This section applies to an authorised fund manager.

(2) COLL 6.8.4 R (1) (Unclaimed, de minimis and joint unitholder distributions) also applies to the depositary of an authorised fund.

(3) Except in the case of COLL 6.8.2 R (1) (Accounting periods) and COLL 6.8.3 R (1) (Income allocation and distribution), COLL 6.8 applies as if each sub-fund were a separate authorised fund.

Accounting periods

6.8.2 (1) An authorised fund must have:

(a) an annual accounting period;
(b) a half-yearly accounting period; and
(c) an accounting reference date.

(2) A half-yearly accounting period begins when an annual accounting period begins and ends on:

(a) the day which is six months before the last day of that annual accounting period; or
(b) some other reasonable date as set out in the prospectus of the scheme.

(3) The first annual accounting period of a scheme must begin:

(a) on the first day of any period of initial offer; or
(b) in any other case, on the date of the relevant authorisation order;

and in either case must end on the next accounting reference date, except where (4) applies.

(4) When the accounting reference date of a scheme falls less than six months after the beginning of the first annual accounting period, that period may be extended until the subsequent accounting reference date.

(5) Each annual accounting period of a scheme subsequent to the first period must begin immediately after the end of the previous period.
and must end on the next accounting reference date, except where (6) or (6A) applies.

(5A) Each annual accounting period or half-yearly accounting period must end either at the end of the day determined under this rule or, if the authorised fund manager so decides, at the last valuation point on that day.

(6) Following a revision to the prospectus of the scheme that includes a change to the accounting reference date, the annual accounting period may be shortened, or extended by up to six months, so as to end on the new accounting reference date.

(6A) If the authorised fund manager notifies the depositary that a particular annual accounting period or half-yearly accounting period is to end on a specified day, which is not more than seven days after, and not more than seven days before, the day on which the period would otherwise end under this rule, that notice is to have effect provided it is given before the day on which the period would otherwise end.

(7) The authorised fund manager must consult the depositary and the scheme’s auditor before shortening or extending an accounting period in accordance with (4) or (6).

6.8.2A When the annual accounting period of a scheme is extended under COLL 6.8.2 R (4) or (6), resulting in a longer than usual period before the publication of reports to unitholders, the authorised fund manager should make summary information about the investment activities of the scheme available to unitholders during that period, in accordance with Principles 6 (Customers’ interests) and 7 (Communications with clients).

Income allocation and distribution

6.8.2B The allocation or distribution of the income of a UCITS scheme must be determined in accordance with its instrument constituting the fund, its prospectus and the general law of the United Kingdom.

[Note: article 86 of the UCITS Directive]

6.8.3 (1) An authorised fund must have an annual income allocation date, which must be within four months of the end of the relevant annual accounting period.

(2) An authorised fund may have interim income allocation dates and one or more interim accounting periods for each of those dates and, if it does, the interim income allocation date must be within four months of the end of the relevant interim accounting period(s).

(3) An authorised fund must have a distribution account to which the amount of income allocated to classes of units that distribute income is transferred as at the end of the relevant accounting period.

(3A) The amount available for income allocations must be calculated by:
(a) taking the net revenue after taxation determined in accordance with the IMA SORP;

(b) making any transfers, to the extent permitted by the prospectus, between the income account and the capital account in order that the amount available for income allocations is calculated as if the revenue from debt securities had been determined disregarding the effect of:
   (i) the change in the Retail Prices Index during the period, provided that the policy is to invest predominantly in index-linked securities and the transfer relates only to amounts in respect of index-linked gilt-edged securities; or
   (ii) amortisation, provided that the amount available for income allocations is not less than if such transfers had not been made;

(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 6.7.10 R (Allocation of payments to income or capital);
   (iv) taxation;
   (v) the aggregate amount of income property included in units issued, cancelled and converted during the period; and
   (vi) amounts determined by the authorised fund manager to be the reportable income of other collective investment schemes.

(4) If income is allocated during an accounting period:

   (a) with effect from the end of the relevant annual or interim accounting period, the amount of income allocated to classes of units that accumulate income becomes part of the capital property and requires an adjustment to the proportion of the value of the scheme property to which they relate if other classes of units are in issue during the period;

   (b) the adjustment in (a) must ensure the price of units remains unchanged despite the transfer of income; and

   (c) the amount of any interim allocation may not be more than the amount which, in the opinion of the authorised fund manager, would be available for allocation if the interim accounting period and all previous interim accounting periods in the same annual accounting period, taken together, were an annual accounting period.

Allocation of income to different classes of unit

In the case of sub-funds with more than one class of units in issue, the proportionate interests of each class of units in the amount available for income allocations should be determined in accordance with the instrument constituting the fund.
6.8.4 Unclaimed, de minimis and joint unitholder distributions

(1) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the prospectus, must become part of the capital property.

(2) The authorised fund manager and the depositary may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.

(3) Distributions made to the first named joint unitholder on the register will be as effective a discharge to the trustee and manager, as if the first named joint unitholder had been a sole unitholder.

6.8.5 Guidance: contents of the prospectus

COLL 4.2.5 R (Table: contents of prospectus) requires the details of COLL 6.8.2 R, COLL 6.8.3 R (1) and COLL 6.8.3 R (2) and COLL 6.8.4 R (1) and COLL 6.8.4 R (2) to be contained in the prospectus as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.
6.9 Independence, names and UCITS business restrictions

Application

6.9.1 R This section applies to an authorised fund manager, a depositary, an ICVC and any other directors of an ICVC.

6.9.1A G Articles 20 to 24 of the UCITS level 2 regulation set out detailed provisions that must be read by the authorised fund manager and the depositary of a UCITS scheme alongside ■ COLL 6.9.2G to ■ COLL 6.9.5G.

Independence of depositaries and scheme operators

6.9.2 G (1) Regulation 15(8)(f) of the OEIC Regulations (Requirements for authorisation) requires independence between the depositary, the ICVC and the ICVC’s directors, as does section 243(4) of the Act (Authorisation orders) for the trustee and manager of an AUT, and section 261D(4) of the Act (Authorisation orders) for the depositary and authorised fund manager of an ACS. ■ COLL 6.9.3 G to ■ COLL 6.9.5 G give the FCA’s view of the meaning of independence of these relationships. An ICVC, its directors and depositary or a manager and a trustee of an AUT or an authorised fund manager and depositary of an ACS are referred to as “relevant parties” in this guidance.

(2) There are at least three possible kinds of links between the relevant parties:

(a) directors in common;

(b) cross-shareholdings; and

(c) contractual commitments.

(3) If any of these links exist between the relevant parties, the FCA will have regard to ■ COLL 6.9.3 G to ■ COLL 6.9.5 G in determining whether there is independence.

Independence: influence by directors

6.9.3 G (1) Independence is likely to be lost if, by means of executive power, either relevant party could control the action of the other.

(2) The board of one relevant party should not be able to exercise effective control of the board of another relevant party. Arrangements which might indicate this situation include quorum
provisions and reservations of decision-making capacity of certain directors.

(3) For an AUT or ACS, the FCA would interpret the concept of directors in common to include any directors of associates of one relevant party who are simultaneously directors of the other relevant party.

(4) For an ICVC, independence would not be met if:

(a) a director of the ICVC or any associate of the director is a director, an employee, or both of the depositary; or

(b) a director of an ICVC:

(i) has a direct or indirect shareholding for investment purposes of more than 0.5% of the votes at a general meeting or a meeting of holders of the class of share concerned of the depositary of that ICVC; or

(ii) has any other relationship with the depositary which might reasonably be expected to give rise to a potential conflict of interest.

Independence: influence by shareholding

Independence is likely to be lost if either of the relevant parties could control the actions of the other by means of shareholders' votes. The FCA considers this would happen if any shareholding by one relevant party and their respective associates in the other exceeds 15% of the voting share capital, either in a single share class or several share classes. The FCA would be willing, however, to look at cross-shareholdings exceeding 15% on a case-by-case basis to consider if there were exceptional grounds for concluding that independence was safeguarded by other means.

Independence: contractual commitments

The FCA would encourage relevant parties to consult it in advance about its view on the consequences of any intended contractual commitment or relationship which could affect independence, whether directly or indirectly.

Undesirable or misleading names

(1) Regulation 15(9) of the OEIC Regulations, and sections 243(8) and 261D(10) of the Act require that an authorised fund's name must not be undesirable or misleading. This section contains guidance on some specific matters the FCA will consider in determining whether the name of an authorised fund is undesirable or misleading. It is in addition to the requirements of regulation 19 of the OEIC Regulations (Prohibition on certain names).

(2) The FCA will take into account whether the name of the scheme:

(a) is substantially similar to the name of another authorised fund;

(b) implies that the authorised fund has merits which are not, or might not be, justified;

(c) implies that the authorised fund manager has particular qualities, which may not be justified;
(d) is inconsistent with the authorised fund's investment objectives or policy;
(e) implies that the authorised fund is not an authorised fund (for example, describing the authorised fund as a "plan" or "account" are unlikely to be acceptable); and
(f) might mislead investors into thinking that persons other than the authorised fund manager are responsible for the authorised fund.

(3) The FCA is unlikely to approve a name of an authorised fund that includes the word "guaranteed" unless:

(a) the guarantee is given by:
   (i) an authorised person;
   (ii) a person which is established in an EEA State and equivalent to an authorised person; or
   (iii) a person subject to prudential supervision in accordance with criteria defined by UK law or prudential rules at least as stringent as those laid down by UK law;

(b) the authorised fund manager can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;

(c) the guarantee covers all unitholders within the authorised fund and is legally enforceable by each unitholder who is intended to benefit from it or by a person acting on that unitholder's behalf;

(d) the guarantee relates to the total amount paid for a unit which includes any charge or other costs of buying or selling units in the authorised fund;

(e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and

(f) where the guarantee applies to different classes of unit, it is identical in its application to all classes except for the differences attributable to income already received or charges already suffered by the different classes of unit.

(4) The name of an authorised fund may indicate a guaranteed capital return or income return or both but only if the total amount paid for a unit is guaranteed in accordance with (3).

(5) The FCA is unlikely to approve a name of an authorised fund that includes words implying a degree of capital security (such as “capital protected” or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the prospectus, and:

(a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a unit; or

(b) the investment objective and investment policy for the authorised fund are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a unit.
(6) When determining whether (5) is complied with, the 
FCA will take into account whether the degree of capital 
security implied by the name fairly reflects the nature of the 
arrangements for providing that security. This assessment 
will take place on a case-by-case basis.

**Undesirable or misleading names: umbrellas**

6.9.7 R

The *authorised fund manager* must ensure that the name of a *sub-fund* or of a *class of unit* is not undesirable or misleading.

**Undesirable or misleading names: umbrellas - guidance**

6.9.8 G

When deciding whether COLL 6.9.7R is complied with, the 
FCA will take into account COLL 6.9.6G. COLL 6.9.7R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

6.9.8A R [deleted]

**Use of the term 'UCITS ETF'**

6.9.8B G

(1) ESMA has issued guidelines on the use of the term 'UCITS ETF'. A 'UCITS ETF' is a UCITS with at least one unit or share class which is traded throughout the day, on at least one regulated market or multilateral trading facility, with at least one market maker that takes action to ensure that the stock exchange value of its units or shares does not significantly vary from its net asset value and, where applicable, its indicative net asset value.

(2) A 'UCITS ETF' should use the identifier 'UCITS ETF' which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, instrument of incorporation, prospectus, key investor information document or marketing communications.

(3) A UCITS which is not a 'UCITS ETF' should not use the 'UCITS ETF' identifier, 'ETF' or 'exchange traded fund' in its name or in any of the documents or communications referred to in (2).

[Note: ESMA's Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)]

**Use of the term 'long-term asset fund' or 'LTAF'**

6.9.8C R

(1) Paragraph (2) applies to the *authorised fund manager* of a UCITS scheme or a non-UCITS retail scheme, an ICVC which is such a scheme, and any other directors of such an ICVC.

(2) The *scheme* or *sub-fund*:

(a) must not use ‘Long-Term Asset Fund’ or ‘LTAF’ in its name; and

(b) must not otherwise suggest through its name that it is a fund which invests in long-term assets or describe itself as such.

6.9.8D G

(1) The term ‘Long-Term Asset Fund’ or ‘LTAF’ is reserved for *long-term asset funds* (see COLL 15).
(2) Only AIFs that are authorised in accordance with the LTIF Regulation may use the designation ‘LTIF’ or ‘long-term investment fund’.

Restrictions of business for UCITS management companies

A UCITS management company must not engage in any activities other than:

1. [deleted]

1A. managing a UK UCITS;

1B. managing an AIF;

1C. acting as a residual CIS operator;

2. activities for the purposes of or in connection with those in (1A), (1B) or (1C);

3. collective portfolio management, including without limitation:
   (a) investment management;
   (b) administration:
      (i) legal and fund management accounting services;
      (ii) customer enquiries;
      (iii) valuation and pricing (including tax returns);
      (iv) regulatory compliance monitoring;
      (v) maintenance of unitholder register;
      (vi) distribution of income;
      (vii) unit issues and redemptions;
      (viii) contract settlements (including certificate dispatch); and
      (ix) record keeping; and
   (c) marketing;

4. managing investments where the relevant portfolio includes one or more financial instruments;

5. investment advice concerning financial instruments where the firm has permission for the activity in (4); and

6. safeguarding and administration of collective investment scheme units where the firm has a permission for the activity in (4).

Connected activities: guidance

(1) Examples of the connected activities referred to in COLL 6.9.9 R (2) include management of group plans, as long as they are dedicated to investments in unit trust schemes, co-ownership schemes, limited partnership schemes and OEICs for which the firm acts as an authorised fund manager.

(2) The activities referred to at COLL 6.9.9R (3) (a) to COLL 6.9.9R (3) (c) may be performed on behalf of EEA UCITS management companies.
Notification to the FCA in its role as registrar of ICVCs

An ICVC must notify the FCA within 14 days of the occurrence of any of the following:

1. any amendment to the instrument of incorporation;
2. any change in the address of the head office of the ICVC;
3. any change of director;
4. any change of depositary;
5. in respect of any director or depositary, any change in the information mentioned in regulation 12(1)(b) or (c) of the OEIC Regulations (Applications for authorisation);
6. any change of the auditor of the ICVC;
7. any order in respect of the ICVC made by virtue of regulation 70 of the OEIC Regulations (Mergers and divisions).
6.10 Senior personnel responsibilities

Application

6.10.1 (1) This section applies to an authorised fund manager of a UCITS scheme.

(2) [deleted]

Senior personnel responsibilities

6.10.2 In complying with SYSC 4.3.1 R (Responsibility of senior personnel), an authorised fund manager of a UCITS scheme must ensure that its senior personnel:

(1) are responsible for the implementation of the general investment policy for each scheme it manages, as defined, where relevant, in the prospectus or the instrument constituting the fund;

(2) oversee the approval of investment strategies for each scheme it manages;

(3) are responsible for ensuring that the authorised fund manager has a permanent and effective compliance function as referred to in SYSC 6.1 (Compliance), even if this function is performed by a third party;

(4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the risk limit system of each scheme it manages are properly and effectively implemented and complied with, even if the risk management function is performed by a third party;

(5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each scheme it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and

(6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in COLL 6.12.5 R (Risk management policy), including the risk limit system for each scheme it manages.

[Note: article 9(2) of the UCITS implementing Directive]
An authorised fund manager of a UCITS scheme must ensure that its senior personnel receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R (2) to COLL 6.10.2R (5).

[Note: article 9(5) of the UCITS implementing Directive]
6.11 Risk control and internal reporting

Application

6.11.1 R

(1) This section applies to an authorised fund manager of a UCITS scheme.

(2) [deleted]

Permanent risk management function

6.11.2 R

(1) An authorised fund manager of a UCITS scheme must establish and maintain a permanent risk management function.

(2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the authorised fund manager’s business and of each scheme it manages.

(3) The authorised fund manager must be able to demonstrate that:

(a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and

(b) its risk management process satisfies the requirements of • COLL 6.12.3 R (Risk management process).

[Note: articles 12(1) and 12(2) of the UCITS implementing Directive]

6.11.3 G

Where the risk management function required under • COLL 6.11.2 R (1) is not hierarchically and functionally independent, the authorised fund manager should nevertheless be able to demonstrate that its risk management process satisfies the requirements of • COLL 6.12.3 R (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[Note: article 12(2) third paragraph and recital (12) of the UCITS implementing Directive]

Duties of the permanent risk management function

6.11.4 R

(1) The permanent risk management function must:

(a) implement the risk management policy and procedures;

(b) ensure compliance with the risk limit system, including statutory limits concerning global exposure and counterparty risk, as
required by COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.3 (Derivative exposure);

(c) provide advice to the governing body, as regards the identification of the risk profile of each scheme it manages;

(d) provide regular reports to the governing body and, where it exists, the supervisory function on:

(i) the consistency between the current level of risk incurred by each scheme it manages and the risk profile agreed for that scheme;

(ii) the compliance of each scheme it manages with the risk limit system referred to in (b); and

(iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(e) provide regular reports to the senior personnel outlining the current level of risk incurred by the relevant scheme and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and

(f) review and support, where appropriate, the arrangements for the valuation of OTC derivatives, as referred to in COLL 5.2.23 R (OTC transactions in derivatives), COLL 5.2.23C R (Valuation of OTC derivatives) and in this rule.

(2) The permanent risk management function must have the authority and access to all relevant information necessary to fulfil the duties set out in (1).

[Note: articles 12(3), 12(4) and 44(3) of the UCITS implementing Directive]
6.12 Risk management policy and risk measurement

Application

6.12.1 This section applies to an authorised fund manager and a depositary of a UCITS scheme.

6.12.2 [deleted]

Risk management process

6.12.3 (1) (a) An authorised fund manager of a UCITS scheme must use a risk management process enabling it to monitor and measure at any time the risk of the scheme's positions and their contribution to the overall risk profile of the scheme.

(b) In particular, an authorised fund manager of a UCITS scheme must not solely or mechanistically rely on credit ratings issued by credit rating agencies, as defined in article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, or credit rating agencies as defined in the CRA Regulation, for assessing the creditworthiness of the scheme's assets.

(2) An authorised fund manager must regularly notify the following information to the FCA and at least on an annual basis:

(a) a true and fair view of the types of derivatives and forward transactions to be used within the scheme together with their underlying risks and any relevant quantitative limits; and

(b) the methods for estimating risks in derivative and forward transactions.

[Note: article 51(1), first and third paragraphs, of the UCITS Directive and article 45(1) of the UCITS implementing Directive]

6.12.3A An authorised fund manager subject to COLL 6.12.3R(2) must notify the FCA of the information specified in points (a) and (b) of that rule:

(1) annually, within 30 business days of 31 October, with information that is accurate as of 31 October of that year;

(2) using the form in COLL 6 Annex 2R; and
(3) by submitting it:
   (a) online through the appropriate systems accessible from the FCA’s website; or
   (b) if the appropriate systems are unavailable, via email to fundsupervision@fca.org.uk.

(1) In addition, an authorised fund manager subject to COLL 6.12.3R(2) should submit a notification to the FCA if there has been a significant change to the fund’s risk profile since its last report, by sending the form in COLL 6 Annex 2R, completed as applicable, to fundsupervision@fca.org.uk.

(2) A significant change to the fund’s risk profile could include, but is not limited to:
   (a) the first use of derivatives for investment purposes, if derivatives have previously been used only for efficient portfolio management;
   (b) investment in non-standard derivatives, if only standard derivatives have been used previously;
   (c) a change in the type of risk measure used to calculate global exposure (commitment method, relative VaR or absolute VaR); and
   (d) where a VaR measure is used, a change in the parameters of the calculation.

(3) Reports of significant changes only need to contain new information for the period since the previous report.
6.12.4  

(1) The risk management process in COLL 6.12.3 R should take account of the investment objectives and policy of the scheme as stated in the most recent prospectus.

(2) The depositary of a UCITS scheme should take reasonable care to review the appropriateness of the risk management process in line with its duties under COLL 6.6.4 R (General duties of the depositary) and COLL 6.14 R (Duties of the depositary and authorised fund manager: investment and borrowing powers), as appropriate.

(3) An authorised fund manager is expected to demonstrate more sophistication in its risk management process for a scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

(4) An authorised fund manager should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

(5) The risk management process should enable the analysis required by COLL 6.12.3 R to be undertaken at least daily or at each valuation point, whichever is more frequent.

(6) An authorised fund manager should undertake the risk assessment required by COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the derivative transaction is an associate of the authorised fund manager the UK UCITS management company or the credit issuer.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

6.12.5  

(1) An authorised fund manager of a UCITS scheme must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that scheme is or might be exposed.

(2) The risk management policy must comprise such procedures as are necessary to enable the authorised fund manager to assess the exposure of each UCITS it manages to market risk, liquidity risk and counterparty risk, and to all other risks, including operational risk, that might be material for that scheme.

(3) The risk management policy must address at least the following elements:

(a) the techniques, tools and arrangements that enable the authorised fund manager to comply with the obligations set out in this section and COLL 5.3 (Derivative exposure);

(b) the allocation of responsibilities within the authorised fund manager pertaining to risk management; and

(c) the terms, contents and frequency of reporting of the risk management function referred to in COLL 6.11.2 R (Permanent
risk management function) to the governing body, senior personnel and, where appropriate, to the supervisory function.

(4) To meet its obligations in (1), (2) and (3) an authorised fund manager must take into account the nature, scale and complexity of its business and of the UCITS it manages.

[Note: article 38 of the UCITS implementing Directive]

Monitoring of risk management policy

6.12.7

(1) An authorised fund manager of a UCITS scheme must assess, monitor and periodically review:

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in COLL 6.12.5 R;

(b) the level of compliance by the authorised fund manager with the risk management policy and with those arrangements, processes and techniques referred to in COLL 6.12.5 R; and

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

(2) The authorised fund manager must notify the FCA of any material changes to the risk management process.

[Note: article 39(1) and 39(2) of the UCITS implementing Directive]

6.12.8

Authorised fund managers are advised that when they applied for authorisation from the FCA under the Act, their ability to comply with the requirements in COLL 6.12.7 R would have been assessed by the FCA as an aspect of their fitness and properness in determining whether the threshold conditions set out in Schedule 6 (Threshold conditions) of the Act were met. Firms are further advised that their compliance with these requirements is subject to review by the FCA on an ongoing basis in determining whether they continue to meet the threshold conditions.

[Note: article 39(3) of the UCITS implementing Directive]
### Measurement and management of risk

#### 6.12.9

1. An authorised fund manager of a UCITS scheme must adopt adequate and effective arrangements, processes and techniques in order to:

   - a) measure and manage at any time the risks to which that UCITS is or might be exposed; and
   - b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with COLL 5.2.11B R (Counterparty risk and issuer concentration) and COLL 5.3 (Derivative exposure).

2. For the purposes of (1), the authorised fund manager must take the following actions for each UCITS it manages:

   - a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
   - b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
   - c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;
   - d) establish, implement and maintain a risk limit system for each UCITS;
   - e) ensure that the current level of risk complies with that risk limit system; and
   - f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that risk limit system, result in timely remedial actions in the best interests of unitholders.

3. The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the authorised fund manager and the UCITS it manages and be consistent with the UCITS’ risk profile.

   [Note: articles 40(1) and 40(2) of the UCITS implementing Directive]

#### 6.12.10

[deleted]

#### 6.12.11

1. An authorised fund manager must employ an appropriate liquidity risk management process in order to ensure that each UCITS it manages is able to comply at any time with COLL 6.2.16 R (Sale and redemption).
(2) Where appropriate, the **authorised fund manager** must conduct stress tests to enable it to assess the **liquidity risk** of the **UCITS** under exceptional circumstances.

**[Note: article 40(3) of the UCITS implementing Directive]**

**6.12.12** **R**

An **authorised fund manager** must ensure that, for each **UCITS** it manages, the liquidity profile of the investments of the **scheme** is appropriate to the **redemption** policy laid down in the **instrument constituting the fund** or the **prospectus**.

**[Note: article 40(4) of the UCITS implementing Directive]**

**CESR guidelines: Risk management principles for UCITS**

**6.12.13** **G**

**Authorised fund managers** are advised that CESR issued guidelines prior to the revision of the **UCITS Directive** in 2009 which, to the extent they remain compatible with the **rules** and other **guidance** in **COLL**, should be complied with in applying the **rules** in this section. These guidelines are available at:

Guidelines - Risk management principles for UCITS (CESR/09-178)

6.13 Record keeping

Application

6.13.1

(1) This section applies to an authorised fund manager of a UCITS scheme.

(2) [deleted]

Recording of portfolio transactions

6.13.2

(1) An authorised fund manager of a UCITS scheme must ensure, for each portfolio transaction relating to a scheme it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

(2) The record referred to in (1) must include:

(a) the name or other designation of the scheme and of the person acting on behalf of the scheme;

(b) the details necessary to identify the instrument in question;

(c) the quantity;

(d) the type of the order or transaction;

(e) the price;

(f) for orders, the date and exact time of the transmission of the order and the name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order; and

(i) for executed transactions, the counterparty and execution venue identification.

[Note: article 14 of the UCITS implementing Directive]

Recording of subscription and redemption orders

6.13.3

(1) An authorised fund manager of a UCITS scheme must take all reasonable steps to ensure that every subscription and redemption order it receives relating to units in any such scheme it manages are centralised and recorded immediately after receipt of that order.
(2) The record referred to in (1) must include information on the following:

(a) the relevant scheme;
(b) the person giving or transmitting the order;
(c) the person receiving the order;
(d) the date and time of the order;
(e) the terms and means of payment;
(f) the type of the order;
(g) the date of execution of the order;
(h) the number of units subscribed or redeemed;
(i) the subscription or redemption price for each unit;
(j) the total subscription or redemption value of the units; and
(k) the gross value of the order including charges for subscription or net amount after charges for redemption.

[Note: article 15 of the UCITS implementing Directive]
(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and

(c) it must not be possible for the records to be otherwise manipulated or altered.

[Note: article 16 of the UCITS implementing Directive]

### Electronic data processing

**6.13.5** An authorised fund manager of a UCITS scheme must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order, in order to be able to comply with **COLL 6.13.2 R** (Recording of portfolio transactions) and **COLL 6.13.3 R** (Recording of subscription and redemption orders).

[Note: article 7(1) of the UCITS implementing Directive]

**6.13.6** An authorised fund manager of a UCITS scheme must ensure a high level of security during the electronic data processing referred to in **COLL 6.13.5 R** as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the UCITS implementing Directive]
UK UCITS management company of UCITS schemes: Derivative Use Report (FSA042: UCITS)
**Guidance notes on UK UCITS management company of UCITS schemes:**

**Derivative Use Report (FSA042: UCITS)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Guidance</th>
</tr>
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<tr>
<td><strong>Fund name</strong></td>
<td>This is the name of the scheme or, where applicable, of the <em>sub-fund</em> as it appears on the FS Register.</td>
</tr>
<tr>
<td><strong>PRN or LEI</strong></td>
<td>For a UCITS scheme, this is the product reference number of the scheme or, where applicable, of the sub-fund which appears on the FS Register.</td>
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<tr>
<td><strong>Derivative</strong></td>
<td>A forward, a future, an option, a swap, a warrant or any other type of derivative instrument.</td>
</tr>
<tr>
<td><strong>Derivatives used for investment purposes</strong></td>
<td>This means that derivatives are not being used solely in pursuit of efficient portfolio management.</td>
</tr>
<tr>
<td><strong>Global exposure</strong></td>
<td>Global exposure is calculated as either the incremental exposure and leverage generated through the use of derivatives, or the market risk of the scheme property, as set out in COLL 5.3.7R. Market risk is calculated using one of the stated risk measures.</td>
</tr>
<tr>
<td><strong>Risk measures</strong></td>
<td>For each scheme or, where applicable, sub-fund, information should be provided for only one of the risk measures (commitment approach, relative VaR or absolute VaR) indicated in the table.</td>
</tr>
<tr>
<td><strong>Average leverage</strong></td>
<td>In line with the CESR Guidelines (CESR/10-788), this is the mean of all leverage calculations over the past twelve months, leverage being calculated as the sum of the notional of the derivatives used.</td>
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<tr>
<td><strong>Leverage limit</strong></td>
<td>In line with Box 24 of the CESR guidelines (CESR/10-788), the usually expected or maximum expected level of leverage should be provided. Where these are not applicable, please provide the maximum leverage limit approved internally by the authorised fund manager (or leave blank if appropriate and provide an explanation in the comments box).</td>
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Chapter 7

Suspension of dealings, termination of authorised funds and side pockets
7.1 Introduction

Application

7.1.1 R
(1) This chapter applies to an ICVC, an ACD, any other director of an ICVC, a depositary of an ICVC, an authorised fund manager of an AUT or ACS and a depositary of an AUT or ACS, where such AUT, ACS or ICVC is a UCITS scheme or a non-UCITS retail scheme in accordance with COLL 7.1.2 R (Table of application).

(2) COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger.

Table of application

7.1.2 R
This table belongs to COLL 7.1.1 R.

<table>
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<th>Rule</th>
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<th>ACD</th>
<th>Any other directors of an ICVC</th>
<th>Depositary of an ICVC</th>
<th>Authorised fund manager of an AUT or ACS</th>
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### Purpose

1. This chapter helps to achieve the *statutory objective* of protecting investors by ensuring the *authorised fund manager* does not sell or *redeem units* at a *price* that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to...
value, or to dispose of and obtain payment for, all or some of the scheme property of an authorised fund or sub-fund. COLL 7.2.-3R, COLL 7.2.-2R, COLL 7.2.-1R, and COLL 7.2.1 R set out the circumstances in which an authorised fund manager must or may suspend dealings in units and the manner in which a suspension takes effect.

(2) This chapter also helps with the statutory objective of protecting consumers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of ICVCs, AUTs and co-ownership schemes. EG 14(Collective investment schemes) deals with the FCA's powers to revoke the authorisation of authorised funds otherwise than by consent.

(3) This chapter also helps to achieve the statutory objectives of protecting consumers and protecting and enhancing the integrity of the UK financial system, by enabling unitholders or potential unitholders in a UCITS scheme or non-UCITS retail scheme with affected investments to continue to deal in units representing assets held in the scheme property that are not affected investments.
7.2 Suspension and restart of dealings

Requirement

7.2.-3  
(1) This rule applies to the authorised fund manager of a non-UCITS retail scheme if at any time:

(a) a standing independent valuer has expressed material uncertainty in accordance with VPS 3 paragraph 2.2(o) and the guidance at VPGA10, RICS Valuation Global Standards 2017 (The Red Book) (effective from 1 July 2017), about the value of one or more immovables under management and that material uncertainty applies to at least 20% of the value of the scheme property; or

(b) the authorised fund invests at least 20% of the value of the scheme property in units of one or more other authorised funds for which dealings in units have been temporarily suspended under (2).

(2) As soon as possible and in any event by the end of the second business day after the day on which this rule starts to apply under (1), the authorised fund manager must temporarily suspend dealings in units in the authorised fund unless (3) applies.

(3) Dealings in units in the authorised fund may continue provided that:

(a) as soon as possible and in any event by the end of the second business day after the day on which this rule starts to apply under (1), the authorised fund manager and the depositary agree that dealings in units in the authorised fund should continue;

(b) the authorised fund manager and the depositary have a reasonable basis for determining that a temporary suspension of dealings in units would not be in the best interests of unitholders in the authorised fund; and

(c) the authorised fund manager and the depositary do not rely solely on a fair value price adjustment when making their determination under (b).

7.2.-2  
(1) This rule applies where the authorised fund manager of a non-UCITS retail scheme is required to temporarily suspend dealings in units in the authorised fund under COLL 7.2.-3R(2) or COLL 7.2.-1R(3).

(2) The authorised fund manager must notify the depositary before suspending dealings in units in the authorised fund.

(3) During the suspension, the authorised fund manager must follow the requirements set out in the following provisions, where applicable:
Section 7.2 : Suspension and restart of dealings

(a) COLL 7.2.1R(2);
(b) COLL 7.2.1R(2A);
(c) COLL 7.2.1R(2B);
(d) COLL 7.2.1R(2C);
(e) COLL 7.2.1R(3);
(f) COLL 7.2.1R(4A);
(g) COLL 7.2.1R(5); and
(h) COLL 7.2.1R(6).

(4) Dealings in units must restart as soon as reasonably practicable after:
   (a) the standing independent valuer’s material uncertainty assessment applies to less than 20% of the value of the scheme property; and
   (b) the scheme’s depositary gives its approval for the temporary suspension to be removed.

(5) If a non-UCITS retail scheme operates limited redemption arrangements and a suspension has prevented dealings in units at a valuation point, the authorised fund manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

(6) This rule applies to a sub-fund as it applies to an authorised fund, and:
   (a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and
   (b) this rule can only apply to one or more classes of units without being applied to other classes if the authorised fund manager considers that a suspension of dealings in units of some but not all classes of units is in the best interest of all the unitholders of that authorised fund or sub-fund.

(1) This rule applies where the authorised fund manager and the depositary agree that dealings in units in the authorised fund should continue under COLL 7.2.-3R(3) and, if relevant, following a review under this rule.

(2) During the period of material uncertainty (see (8) below), the authorised fund manager and the depositary must review their agreement not to suspend dealings in units in the authorised fund at least every 14 days.

(3) Following such a review the authorised fund manager must temporarily suspend dealings in units in the authorised fund unless (4) applies.

(4) Dealings in units in the authorised fund may continue provided that:
   (a) the authorised fund manager and the depositary agree that dealings in units in the authorised fund should continue;
(b) the authorised fund manager and the depositary have a reasonable basis for determining that a temporary suspension of dealings in units would not be in the best interests of unitholders in the authorised fund; and

(c) the authorised fund manager and the depositary do not rely solely on a fair value price adjustment when making their determination under (b).

(6) The authorised fund manager must inform the FCA of the results of each review.

(7) This rule applies to a sub-fund as it applies to an authorised fund, and:

(a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and

(b) this rule can only apply to one or more classes of units without being applied to other classes if the authorised fund manager considers a suspension of dealings in units of some but not all classes of units is in the best interest of all the unitholders of that authorised fund or sub-fund.

(8) In this rule, a “period of material uncertainty” is any period during which one or both of COLL 7.2.-3R(1)(a) and (b) applies.

1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, temporarily suspend the issue, cancellation, sale and redemption of units in an authorised fund (referred to in this chapter as “dealings in units”), where due to exceptional circumstances it is in the interest of all the unitholders in the authorised fund. Where an authorised fund is a regulated money market fund, the authorised fund manager must ensure that any such suspensions are consistent with the Money Market Funds Regulation.

(1A) The authorised fund manager and the depositary must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the unitholders.

(2) On suspension, the authorised fund manager, or the depositary if it has required the authorised fund manager to suspend dealings in units, must:

(a) immediately inform the FCA, stating the reason for its action; and

(b) as soon as practicable give written confirmation of the suspension and the reasons for it to the FCA.

(2A) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.

(2B) In making the notification set out in (2A), the authorised fund manager must ensure that it:

(a) draws unitholders’ particular attention to the exceptional circumstance which resulted in the suspension;
(b) is clear, fair and not misleading; and
(c) informs unitholders how to obtain the information detailed in (2C).

(2C) The authorised fund manager must ensure that it publishes (on its website or by other general means) sufficient details to keep unitholders appropriately informed about the suspension including, if known, its likely duration.

(3) During a suspension:
(a) none of the obligations in COLL 6.2 (Dealing) apply; and
(b) the authorised fund manager must comply with as much of COLL 6.3 (Valuation and pricing) as is practicable in the light of the suspension.

(4) The suspension of dealings in units must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased.

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (2).

(5) The authorised fund manager must inform the FCA of the proposed restart of dealings in units and immediately after the restart must confirm this by giving notice to the FCA.

(6) The authorised fund manager may agree, during the suspension, to deal in units in which case all deals accepted during, and outstanding prior to, the suspension will be undertaken at a price calculated at the first valuation point after restart of dealing in units, subject to (8).

(7) This rule applies to a sub-fund as it applies to an authorised fund, and:
(a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and
(b) this rule can only apply to one or more classes of units without being applied to other classes, if it is in the interest of all the unitholders.

(8) If an authorised fund operates limited redemption arrangements, and the event in (1) has affected a valuation point, the authorised fund manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

[Note: article 45(2) of the UCITS Directive]
Temporary suspension of units of a master UCITS or qualifying master scheme

7.2A

Where:

(1) an authorised fund manager of a UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FCA; or

(2) an operator of an EEA UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of its Home State regulator; or

(3) an authorised fund manager of a non-UCITS retail scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of the FCA; or

(4) the operator of a recognised scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units whether at its own initiative or at the request of its regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) or feeder NURS is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS or qualifying master scheme.

[Note: article 60(3) of the UCITS Directive]

Guidance

7.2G

(-1) The guidance in (1), (1A) and (1B) does not apply in circumstances where an authorised fund manager is required to temporarily suspend dealings in units in an authorised fund under ■ COLL 7.2.-3R or ■ COLL 7.2.-1R.

(1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the unitholders.

(1A) Except in the case of FIIAs (for which see (1B) below), difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the authorised fund manager and depositary would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the unitholders. Before an authorised fund manager and depositary determine that it is in the best interests of unitholders to suspend dealing, they should ensure that any alternative courses of action have been discounted.

(1B) In the case of FIIAs, there may be circumstances where suspension is genuinely in the best interests of unitholders; for example, where orders received for redemptions of units at the next valuation period cannot be executed without significantly depleting the scheme’s...
liquidity, and/or without selling scheme property at a substantial discount to its open market value.

(2) The authorised fund manager will need to ensure that any suspension, while maintaining unitholders' interests, is temporary, of minimal duration and is consistent with the provisions of the prospectus and the instrument constituting the fund.

(3) During a suspension, the authorised fund manager should inform any person who requests a sale or redemption of units that all dealings in units have been suspended and that that person has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.
7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1 (1) The winding up of an ICVC may be carried out under this section instead of by the court provided the ICVC is solvent and the steps required under regulation 21 the OEIC Regulations (The Authority’s approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the ACD and any other directors of the ICVC.

(2) The termination of a sub-fund may be carried out under this section, instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC’s instrument of incorporation and prospectus have been notified to the FCA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) A sub-fund or ICVC may also be terminated or wound up in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

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

Special meanings for termination of a sub-fund of an ICVC

7.3.2 In this section, where a sub-fund of an ICVC is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
(4) liabilities, are references to liabilities of the ICVC allocated or attributable to the sub-fund to be terminated.

### Guidance on winding up or termination

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

Summary of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval.

Notes: N = Notice to be given to the FCA under regulation 21 of OEIC Regulations  
E = commencement of winding up or termination  
W/U = winding up  
FAP = final accounting period (COLL 7.3.8 R(4))

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days</td>
<td>7.3.5 (2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary</td>
<td>By N + 21 days</td>
<td>7.3.5 (4) and (5)</td>
</tr>
<tr>
<td>3</td>
<td>Receive the FCA approval</td>
<td>N + one month</td>
<td>Regulation 21 of OEIC Regulations</td>
</tr>
<tr>
<td>4</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.3.6</td>
</tr>
<tr>
<td>5</td>
<td>Realise proceeds, wind up, instruct depositary accordingly</td>
<td>ASAP after E</td>
<td>7.3.7</td>
</tr>
<tr>
<td>6</td>
<td>Prepare final account or termination account &amp; have account audited</td>
<td>On completion of W/U or termination</td>
<td>7.3.8</td>
</tr>
<tr>
<td>7</td>
<td>Send final account or termination account and auditor’s report to the FCA &amp; unitholders</td>
<td>Within 4 months of FAP</td>
<td>7.3.8(6)</td>
</tr>
<tr>
<td>8</td>
<td>Request FCA to revoke relevant authorisation order or update its records</td>
<td>On completion of W/U or termination</td>
<td>7.3.7(9)</td>
</tr>
</tbody>
</table>
When an ICVC is to be wound up or a sub-fund terminated or wound up

(1) An ICVC must not be wound up except:
   (a) under this section; or
   (b) as an unregistered company under Part V of the Insolvency Act 1986.

(1A) A sub-fund must not:
   (a) be terminated except under this section; or
   (b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the OEIC Regulations) as an unregistered company.

(2) An ICVC must not be wound up or a sub-fund terminated under this section if there is a vacancy in the position of ACD.

(3) An ICVC must not be wound up or a sub-fund terminated under this section:
   (a) unless and until effect may be given, under regulation 21 of the OEIC Regulations, to proposals to wind up the affairs of the ICVC or to proposals to make the alterations to the ICVC’s instrument of incorporation and prospectus that will be required if a sub-fund is terminated; and
   (b) unless a statement has been prepared and sent or delivered to the FCA under COLL 7.3.5 R (Solvency statement) and received by the FCA prior to satisfaction of the condition in (a).

(4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an ICVC or terminate a sub-fund under this section must be taken:
   (a) if an extraordinary resolution to that effect is passed; or
   (b) when the period (if any) fixed for the duration of the ICVC or the sub-fund by the instrument of incorporation expires or any event occurs, for which the instrument of incorporation provides that the ICVC or the sub-fund is to be wound up or terminated; or
   (c) on the date stated in any agreement by the FCA in response to a request from the directors for the winding up of the ICVC or a request for the termination of the sub-fund; or
   (d) on the effective date of a duly approved scheme of arrangement which is to result in the ICVC ceasing to hold any scheme property; or
   (e) in the case of a sub-fund, on the effective date of a duly approved scheme of arrangement which is to result in the sub-fund ceasing to hold any scheme property; or
   (f) in the case of an ICVC that is an umbrella, on the date on which all of its sub-funds fall within (e) or have otherwise ceased to hold any scheme property, notwithstanding that the ICVC may have assets and liabilities that are not attributable to any particular sub-fund.
Solvency statement

7.3.5

(1) Before notice is given to the FCA under regulation 21 of the OEIC Regulations of the proposals referred to in COLL 7.3.4 R (3), the directors must make a full enquiry into the ICVC's or, in the case of termination of a sub-fund, the sub-fund’s affairs, business and property to determine whether the ICVC or the sub-fund will be able to meet all its liabilities.

(2) The ACD must then, based on the results of this enquiry, prepare a statement either:

(a) confirming that the ICVC or the sub-fund will be able to meet all its liabilities within twelve months of the date of the statement; or

(b) stating that such confirmation cannot be given.

(3) This solvency statement must:

(a) relate to the ICVC's or the sub-fund's affairs, business and property at a date no more than 28 days before the date on which notice is given to the FCA;

(b) if there is more than one director, be approved by the board of directors and signed on their behalf by the ACD; and

(c) if it contains the confirmation under (2)(a), be signed by at least one other director or, if there is no director other than the ACD, be signed by the ACD.

(4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the OEIC Regulations (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with regulation 21 of the OEIC Regulations.

Consequences of commencement of winding up or termination

7.3.6

(1) Winding up or termination must commence once the conditions referred to in COLL 7.3.4 R (3) are both satisfied or, if later, once the events in COLL 7.3.4 R (4) have occurred.

(2) Once winding up or termination has commenced:

(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) 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 units, except in respect of the final cancellation under COLL 7.3.7 R (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 7.3.7 R (5);
(d) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the sanction of the directors;

(e) where winding up an ICVC, the ICVC must cease to carry on its business, except for its beneficial winding up; and

(f) the corporate status and corporate powers of the ICVC and (subject to the preceding provisions of this rule) the powers of the directors continue until the ICVC is dissolved.

(3) If the ACD has not previously notified unitholders of the proposal to wind up the ICVC or terminate the sub-fund, the ACD 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

(1) [deleted]

(2) The ACD must, as soon as practicable after winding up or termination has commenced, cause the scheme property to be realised and the liabilities of the ICVC or the sub-fund to be met out of the proceeds.

(3) The ACD must instruct the depositary how such proceeds (until utilised to meet liabilities or make distributions to unitholders) must be held and those instructions must be prepared with a view to the prudent protection of creditors and unitholders against loss.

(4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the ICVC's or the sub-fund's remaining liabilities, the ACD may arrange for the depositary to make one or more interim distributions to the unitholders proportionately to the right of their respective units to participate in scheme property at the commencement of the winding up or termination.

(5) On or before the date on which the final account is sent to unitholders in accordance with COLL 7.3.8 R (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).

(6) Paragraphs (2) to (5) are subject to the terms of any scheme of arrangement sanctioned by an extraordinary resolution passed on or before the commencement of the winding up or termination.

(7) Where the ICVC and one or more unitholders (other than the ACD) agree, the requirement in (2) to realise the scheme property does not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those unitholders.

(8) In the case of (7), the ACD must cause the ICVC to distribute that part of the scheme property in specie to that or those unitholders in
proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the ACD appropriate to ensure that those unitholders bear the proportion of the liabilities and the expenses of the distribution attributable to their units.

(9) The depositary must notify the FCA once the winding up of the ICVC or the termination of a sub-fund (including compliance with COLL 7.3.8 R) is complete and at the same time the ACD or the depositary must request the FCA to revoke the relevant authorisation order (on the winding up of an ICVC) or to update its records (on the termination of a sub-fund of an ICVC).

(10) Where any sum of money stands to the account of the ICVC at the date of its dissolution or a sub-fund at the date of its termination, the ACD must arrange for the depositary to pay or lodge that sum within one month after that date in accordance with regulation 33(4) or (5) of the OEIC Regulations (Dissolution in other circumstances).

(11) [deleted]

(12) [deleted]

(13) [deleted]

(14) [deleted]

(15) [deleted]

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 7.3.7 R (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

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

(2) The account in (1) must be, if there is:
(a) more than one director, approved by the board of directors and be signed on their behalf by the ACD and at least one other director; or

(b) no director other than the ACD, signed by the ACD.

(3) Once signed, this account is the “final account” for the purposes of the winding up of an ICVC and the “termination account” for the purposes of the termination of a sub-fund.

(4) The final account must state the date on which the ICVC’s affairs were 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.

(5) The ACD must ensure that the ICVC’s auditor makes a report in respect of the final account or termination account, which states the auditor’s opinion whether the final account or termination account has been properly prepared for the purpose of (1).

(6) Within 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 FCA and to each person who was a unitholder (or the first named of joint unitholders) immediately before the winding up or termination commenced.

**Duty to ascertain liabilities**

7.3.9  

(1) The ACD must use all reasonable endeavours to ensure that all the liabilities of the ICVC or the sub-fund are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the ACD:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the ACD rejects any claim against the ICVC or the sub-fund in whole or part or against the ICVC or the sub-fund in respect of a liability in whole or part, the ACD must immediately send to the claimant written notice of its reasons for doing so.

**Reports and accounts**

7.3.10  

(1) [deleted]

(1A) [deleted]

(2) For any annual accounting period or half-yearly accounting period which begins after commencement of the winding up or termination,
a copy of the long report must be supplied free of charge to any unitholder upon request.

(3) 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 7.3.7 R (5).

7.3.10A

(1) The effect of COLL 7.3.10R is that the ACD must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with COLL 4.5.14 R.

(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.

Liabilities of the ACD

(1) Except to the extent that the ACD can show that it has complied with COLL 7.3.9 R (Duty to ascertain liabilities), the ACD is personally liable to meet any liability of an ICVC or a sub-fund, of which it is the ACD, wound up or terminated under this section (whether or not the ICVC has been dissolved or, in the case of the sub-fund, termination has been completed) that was not discharged before the completion of the winding up or termination.

(2) Where winding up an ICVC, if the proceeds of the realisation of the assets attributable, or allocated to a particular sub-fund of an umbrella ICVC are insufficient to meet the liabilities attributable or allocated to that sub-fund, the ACD must pay to the ICVC, for the account of that sub-fund the amount of the deficit, unless and to the extent that the ACD can show that the deficit did not arise as a result of any failure by the ACD to comply with the rules in COLL.

(3) The liabilities of the ACD under this rule create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ICVC in the circumstances described in (2)).

(4) The obligations of the ACD under this rule do not affect any other obligation of the ACD under these rules or the general law.

7.3.12

[deleted]
(1) If:

(a) during the course, or as a result, of the enquiry referred to in \( \text{COLL 7.3.5 R (1)} \) (Solvency statement), the directors become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

(b) after winding up or termination has commenced, the ACD becomes of the opinion that the ICVC or the sub-fund will be unable to meet all its liabilities within twelve months of the date of the statement provided under (a) of \( \text{COLL 7.3.5 R (2)} \);

the directors must immediately present a petition or cause the ICVC or sub-fund to present a petition for the winding up of the ICVC or sub-fund as an unregistered company under \( \text{Part V} \) of the Insolvency Act 1986.

(2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or termination has been sent to the FCA, there is a vacancy in the position of ACD:

(a) the directors of the ICVC must immediately present or cause the ICVC or sub-fund to present; or

(b) if there are no directors, the depositary must immediately present;

a petition for the winding up of the ICVC or sub-fund as an unregistered company under \( \text{Part V} \) of the Insolvency Act 1986.
7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of COLL 7.4

(1) This section deals with the circumstances and manner in which an AUT is to be wound up or a sub-fund of an AUT is to be terminated. Under section 256 of the Act (Requests for revocation of authorisation order), the manager or trustee of an AUT may request the FCA to revoke the authorisation order in respect of that AUT. Section 257 of the Act (Directions) gives the FCA the power to make certain directions.

(2) The termination of a sub-fund under this section will be subject to section 251 of the Act (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the trust deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) An AUT or a sub-fund of an AUT may also be wound up or terminated in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

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

Special meanings for termination of a sub-fund of an AUT

In this section, where a sub-fund of an AUT is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
(4) liabilities, are references to liabilities of the **AUT** allocated or attributable to the **sub-fund** to be terminated.

**Guidance on winding up or termination**

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

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Receive FCA approval</td>
<td>N + one month On receipt of notice from the FCA</td>
<td>Section 251 of the Act</td>
</tr>
<tr>
<td>2</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.4.3R</td>
</tr>
<tr>
<td>3</td>
<td>Trustee to realise and distribute proceeds</td>
<td>ASAP after E</td>
<td>7.4.4R(1) to (5)</td>
</tr>
<tr>
<td>4</td>
<td>Send annual long report of manager and trustee to the FCA</td>
<td>Within 4 months of FAP</td>
<td>7.4.5R(5)</td>
</tr>
<tr>
<td>5</td>
<td>Request FCA to revoke relevant authorisation order</td>
<td>On completion of W/U</td>
<td>7.4.4R(6)</td>
</tr>
</tbody>
</table>

**When an AUT is to be wound up or a sub-fund terminated**

(1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:

(a) § COLL 6.2 (Dealing), § COLL 6.3 (Valuation and pricing), § COLL 6.6.20R to § COLL 6.6.24G (Assessment of value) 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 units, except in respect of the final cancellation under § COLL 7.4.4 R (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 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under § COLL 7.4.4 R (1) or (2);

(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 6.4.4 R (1); and
(e) the trustee must proceed to wind up the AUT or terminate the
sub-fund in accordance with COLL 7.4.4 R.

(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.

(2) The events referred to in (1) are:
(a) the authorisation order of the AUT is revoked;
(b) alterations to the AUT’s trust deed and prospectus that will be
required if the sub-fund is terminated taking effect in accordance
with section 251 of the Act;
(c) the passing of an extraordinary resolution winding up the AUT or
terminating the sub-fund, provided FCA’s prior consent to the
resolution has been obtained by the manager or trustee;
(d) in response to a request to the FCA by the manager or the
trustee for the revocation of the authorisation order, the FCA has
agreed, subject to there being no material change in any relevant
factor, that, on the conclusion of the winding up of the AUT, the
FCA will agree to that request;
(e) the expiration of any period specified in the trust deed as the
period at the end of which the AUT is to be wound up or the
sub-fund is to terminate;
(f) the effective date of a duly approved scheme of arrangement,
which is to result in the AUT or sub-fund that is subject to the
scheme of arrangement being left with no property; or
(g) the date on which a relevant pension scheme is notified in
writing by The Pensions Regulator that the scheme is no longer
registered under the Welfare and Pensions Reform Act 1999 as a
stakeholder pension scheme.

(3) This rule is without prejudice to COLL 7.2.1 R(Requirement) and to
any order or direction made under section 257 or 258 of the Act.

Manner of winding up or termination

(1) Where COLL 7.4.3 R (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 7.4.3 R:
(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 7.4.3 R; 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** 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 7.4.3 R (2)(c), COLL 7.4.3 R (2)(d), COLL 7.4.3 R (2)(e) or
COLL 7.4.3 R (2)(f), the **trustee** must notify the **FCA** in writing and at
the same time the manager or **trustee** must request the **FCA** to
revoke the relevant **authorisation order**.

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 7.4.4 R (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**

(1) [deleted]

(1A) [deleted]

(2) For any **annual accounting period** or **half-yearly accounting period**
which begins after commencement of the winding up or termination,
a copy of the long report must be supplied free of charge to any
**unitholder** upon request.
(2A) 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 7.4.5 R (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 7.4.4 R (2)(b).

(3) [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 four months after the end of the final annual accounting period or the termination of the sub-fund, the annual reports of the manager and trustee must be published and sent to the FCA.

(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.

(1) The effect of § COLL 7.4.5R 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 4.5.14 R.

(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.
7.4A Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

Explanation of COLL 7.4A

(1) This section deals with the circumstances and manner in which an ACS is to be wound up or a sub-fund of a co-ownership scheme is to be terminated otherwise than by the court as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (further rules regarding schemes of arrangement are found in COLL 7.6 (Schemes of arrangement)).

(2) An ACS may be wound up under this section only if it is solvent. Under section 261W of the Act (Requests for revocation of authorisation order), the authorised contractual scheme manager or depositary of an ACS may request the FCA to revoke the authorisation order in respect of that ACS. The FCA may then indicate that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to that request. Section 261X of the Act (Directions) gives the FCA the power to make certain directions.

(3) A sub-fund of a co-ownership scheme may be terminated under this section only if it is solvent. The termination of a sub-fund under this section will be subject to section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary). Termination can only commence once the proposed alterations to the contractual scheme deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of a sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(4) An ACS or a sub-fund of a co-ownership scheme may also be wound up or terminated in connection with a scheme of arrangement. The requirements of section 261Q also apply in relation to a proposal that an ACS or a sub-fund of a co-ownership scheme be involved in a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(5) COLL 7.4A.3 G gives an overview of the main steps in winding up a solvent ACS or terminating a sub-fund of a co-ownership scheme under FCA rules, assuming FCA approval.
Special meanings in this section

(1) In this section, where a sub-fund of a co-ownership scheme is being terminated, references to:
   (a) units, are references to units of the class or classes related to the sub-fund to be terminated;
   (b) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);
   (c) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
   (d) liabilities, are references to liabilities of the co-ownership scheme allocated or attributable to the sub-fund to be terminated.

(2) In this section:
   (a) a "section 261Q case" refers to:
      (i) a case where a sub-fund of a co-ownership scheme is to be terminated otherwise than in connection with a scheme of arrangement; or
      (ii) a case where an ACS or a sub-fund of a co-ownership scheme is to be wound up or terminated in connection with a scheme of arrangement; and
   (b) a "section 261W case" refers to a case where an ACS is to be wound up otherwise than in connection with a scheme of arrangement.

Guidance on winding up or termination

This table belongs to § COLL 7.4A.1G (5) (Explanation of § COLL 7.4A)

Summary of the main steps in winding up an ACS or terminating a sub-fund of a co-ownership scheme under FCA rules

Notes: N = Notice to be given to the FCA under section 261Q of the Act in a section 261Q case.
R = Request to wind up the scheme under section 261W of the Act in a section 261W case.
E = commencement of winding up or termination
W/U = winding up
FAP = final accounting period

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule, (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days or R-28 days</td>
<td>7.4A.5R(2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary.</td>
<td>By N + 21 days or by R + 21 days</td>
<td>7.4A.5R(4) and (5)</td>
</tr>
</tbody>
</table>
### Section 7.4A: Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

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<table>
<thead>
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<tbody>
<tr>
<td><strong>3</strong></td>
<td>In a section 261Q case:</td>
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<tr>
<td></td>
<td>- the <em>authorised contractual scheme manager</em> receiving FCA approval;</td>
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<td></td>
<td>- or one month having passed after submitting the requisite notice under section 261Q of the Act without the <em>authorised contractual scheme manager</em> or <em>depositary</em> having received from the FCA a warning notice under section 261R in respect of the proposal.</td>
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<td></td>
<td>In a section 261W case, the <em>authorised contractual scheme manager</em> or <em>depositary</em> receives an indication from the FCA that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>Normal business ceases; notify unitholders</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><em>Depositary</em> to realise and distribute proceeds</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Send annual long report of <em>authorised contractual scheme manager, depositary</em> and auditor to the FCA</td>
</tr>
</tbody>
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**Section 261Q** of the Act (in a section 261Q case)  
7.4A.4R(3)(c) to (e) (in a section 261W case)
When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

7.4A.4 R

(1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:

(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing),
   COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the units and scheme property in the case of a sub-fund of a co-ownership scheme;

(b) the depositary must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.4A.6R(1) or COLL 7.4A.6R(2) (Manner of winding up or termination);

(c) the authorised contractual scheme manager must cease to sell and redeem units;

(d) the authorised contractual scheme manager must cease to arrange the issue or cancellation of units under COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4A.6R(1) or COLL(2);

(e) 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 6.4.4 R(1) (Register: general requirements and contents); and

(f) the depositary must proceed to wind up the ACS or terminate the sub-fund in accordance with COLL 7.4A.6 R.

(2) If the authorised contractual scheme manager has not previously notified unitholders of the proposal to wind up the ACS or terminate the sub-fund of the co-ownership scheme, 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.

(3) The matters referred to in (1) are:

(a) the authorisation order of the ACS is revoked;

(b) alterations to the co-ownership scheme's contractual scheme deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act;

(c) the passing of an extraordinary resolution winding up the ACS or terminating the sub-fund, provided the FCA’s prior consent to the resolution has been obtained by the authorised contractual scheme manager or depositary;
(d) in response to a request to the FCA by the authorised contractual scheme manager or the depositary for the revocation of the authorisation order, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the ACS, the FCA will agree to that request;

(e) the expiration of any period specified in the contractual scheme deed as the period at the end of which the ACS is to be wound up or the sub-fund is to terminate;

(f) the effective date of a duly approved scheme of arrangement, which is to result in the ACS or sub-fund that is subject to the scheme of arrangement being left with no property;

(g) in the case of a co-ownership scheme that is an umbrella, the date on which all or the last of its sub-funds fall within (f) or have otherwise ceased to hold any scheme property, notwithstanding that the co-ownership scheme may have assets and liabilities that are not attributable exclusively to any particular sub-fund.

(4) An ACS must not be wound up nor a sub-fund terminated under this section unless the requirements of both (a) and (b) are satisfied:

(a) An ACS must not be wound up nor a sub-fund terminated under this section unless and until:

(i) in a section 261Q case either:

(A) the FCA has given written approval to the proposal; or

(B) one month has passed since the authorised contractual scheme manager gave notice under section 261Q without the authorised contractual scheme manager or depositary having received from the FCA a warning notice under section 261R in respect of the proposal; or

(ii) in a section 261W case, the FCA indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.

(b) In addition an ACS must not be wound up nor a sub-fund terminated under this section unless a statement has been prepared and sent or delivered to the FCA under COLL 7.4A.5 R (Solvency statement) and received by the FCA prior to the satisfaction of the condition in (a).

(5) This rule is without prejudice to:

(a) COLL 7.2.1 R (Requirement); or

(b) any order or direction made under section 261X (Directions) or 261Y (Applications to the court) of the Act; or

(c) any alternative method (aside from the rules in this section) of winding up a limited partnership scheme provided for by the law.

Solvency statement

(1) Either before notice is given under section 261Q of the Act or before a request is made under section 261W of the Act in relation to the proposals referred to in COLL 7.4A.4R (4), the authorised contractual
scheme manager must make a full inquiry into the ACS’s (or, in the case of the termination of a sub-fund of a co-ownership scheme, the sub-fund’s) affairs, business and property to establish whether the ACS or the sub-fund will be able to meet all its liabilities.

(2) The authorised contractual scheme manager must then, based on the results of this enquiry, prepare and sign a statement either:

(a) confirming that the ACS or the sub-fund of the co-ownership scheme will be able to meet all its liabilities within twelve months of the date of the statement; or

(b) stating that such confirmation cannot be given.

(3) This solvency statement must relate to the ACS’s or the sub-fund’s affairs, business and property at a date no more than 28 days before the date on which notice is given to the FCA under section 261Q or a request is made under section 261W.

(4) A statement which contains the confirmation under (2) must annex a statement signed by the auditor of the ACS to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with section 261Q of the Act or the request made in accordance with section 261W of the Act.

Manner of winding up or termination

(1) Where COLL 7.4A.4R (3)(f) applies, the depositary must cancel all units in issue and wind up the ACS or terminate the sub-fund of the co-ownership scheme in accordance with the approved scheme of arrangement.

(2) In any other case falling within COLL 7.4A.4 R:

(a) once the ACS falls to be wound up or sub-fund terminated, the depositary 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 depositary must cancel all units in issue and distribute the proceeds of that realisation to the unitholders and the authorised contractual scheme manager proportionately to their respective interests in the ACS or sub-fund as at the date, or the date of the relevant event referred to in COLL 7.4A.4 R; and

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the depositary after one year from the date on which they became payable must be paid by the depositary into court (or, in Scotland, as the court may direct), subject to the depositary having a right to retain any expenses properly incurred by him relating to that payment.

(3) For an ACS which is a relevant pension scheme, payments must not be made to unitholders in the ACS. The realisation proceeds must be paid by the depositary in accordance with the contractual scheme deed.
(4) Where the depositary 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 depositary 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 depositary 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 matters referred to in COLL 7.4A.4R (3)(c) to (g), the depositary must notify the FCA in writing and at the same time the authorised contractual scheme manager or depositary must request the FCA to revoke the relevant authorisation order.

For the purposes of this section, an ACS may be treated as having been wound up or a sub-fund of a co-ownership scheme terminated upon completion, where relevant, of all of the steps in (1) to (3):

(1) payment or adequate provision being made (by the depositary after consulting the authorised contractual scheme 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 7.4A.6R (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.

Duty to ascertain liabilities

(1) The authorised contractual scheme manager must use all reasonable endeavours to ensure that all the liabilities of the ACS or the sub-fund of a co-ownership scheme are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the authorised contractual scheme manager:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the authorised contractual scheme manager rejects any claim or liability against the ACS or the sub-fund in whole or part, the authorised contractual scheme manager must immediately send to the claimant written notice of its reasons for doing so.
Accounting and reports during winding up or termination

7.4A.9 R

(1) [deleted]

(2) [deleted]

(3) For any annual accounting period or half-yearly accounting period which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any unitholder upon request.

(4) The authorised contractual scheme manager must ensure that it keeps unitholders appropriately informed about the winding up or termination, including its likely duration.

(5) The authorised contractual scheme manager must send a copy of the information required by (4) 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 7.4A.6R (2)(b).

(6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

(7) Within four months after the end of the final annual accounting period or the termination of the sub-fund of the co-ownership scheme, the annual reports of the authorised contractual scheme manager and depositary must be published and sent to the FCA.

(8) The authorised contractual scheme manager must, on publication of the annual long report in (7), 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.

Liabilities of the authorised contractual scheme manager

7.4A.10 G

(1) The effect of COLL 7.4A.9R is that the authorised contractual scheme 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 (Publication and availability of annual and half-yearly long report).

(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.

7.4A.11 R

(1) Except to the extent that the authorised contractual scheme manager can show that it has complied with COLL 7.4A.8 R (Duty to ascertain liabilities), the authorised contractual scheme manager is personally liable to meet any liability of an ACS or a sub-fund of a co-ownership scheme, of which it is the authorised contractual scheme manager, wound up or terminated under this section (whether or not the winding up of the ACS or the termination of the sub-fund has been completed) that was not discharged before the completion of the winding up or termination.
(2) Where winding up an ACS, if the proceeds of the realisation of the assets attributable or allocated to a particular sub-fund of an umbrella co-ownership scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the authorised contractual scheme manager must pay to the ACS, for the account of that sub-fund, the amount of the deficit, unless and to the extent that the authorised contractual scheme manager can show that the deficit did not arise as a result of any failure by the authorised contractual scheme manager to comply with the rules in COLL.

(3) The liabilities of the authorised contractual scheme manager under this rule create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).

(4) The obligations of the authorised contractual scheme manager under this rule do not affect any other obligation of the authorised contractual scheme manager under these rules or the law.

Miscellaneous

If:

(1) during the course, or as a result, of the enquiry referred to in COLL 7.4A.5R (1) (Solvency statement), the authorised contractual scheme manager becomes of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

(2) after winding up or termination has commenced, the authorised contractual scheme manager becomes of the opinion that the ACS or the sub-fund of a co-ownership scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under COLL 7.4A.5R (2)(a);

the authorised contractual scheme manager must immediately present a petition or cause the ACS or sub-fund to present a petition for the winding up of the ACS or sub-fund as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, as modified by the Contractual Scheme Regulations.
7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

7.5.1 G

(1) The FCA expects that the majority of requests it will receive for the winding up of an authorised fund (under regulation 21(1) of the OEIC Regulations or under sections 256 or 261W of the Act) or termination of a sub-fund will be from authorised fund managers and depositaries who consider that the AUT, ACS, ICVC or sub-fund in question is no longer commercially viable.

(2) It is in consumers’ interests to minimise, as far as possible, the period between which the FCA receives such requests and responds to them. To assist the FCA in arriving at a quick decision, based on all the relevant factors, it would be helpful for the FCA to receive the information listed at ■ COLL 7.5.2 G. Further information, however, may be requested by the FCA after receipt of the information, depending on the individual circumstances of the case.

Information to be provided to the FCA

7.5.2 G

The information referred to in ■ COLL 7.5.1 G is listed below:

(1) the name of the authorised fund or sub-fund;
(2) the size of the authorised fund or sub-fund;
(3) the number of unitholders;
(4) whether dealing in units has been suspended;
(5) why the request is being made;
(6) what consideration has been given to the authorised fund or sub-fund entering into a scheme of arrangement with another regulated collective investment scheme and the reasons why a scheme of arrangement is not feasible;
(7) (a) whether unitholders have been informed of the intention to seek termination, winding up or revocation; and
   (b) if not, when they will be informed;
(8) details of any proposed preferential switching rights offered or to be offered to unitholders;
(9) details of any proposed rebate of charges to be made to unitholders who recently purchased units;

(10) where the costs of winding up or termination will fall;

(11) the depositary's:

(a) statement whether having taken reasonable care it is certain that a scheme of arrangement is not feasible and explaining what steps have been considered that would result in the authorised fund or sub-fund not needing to wind up or terminate (for example, appointing a replacement authorised fund manager); and

(b) confirmation that it will not or does not expect to qualify a report made in accordance with COLL 4.5.11 R (Report of the depositary);

(12) the preferred date for the FCA's determination to revoke authorisation or the date for the commencement of the winding up or termination; and

(13) any additional information or material considered to be relevant to the FCA's decision under sections 251, 256, 261Q and 261W of the Act or regulation 21 of the OEIC Regulations (as appropriate).
7.6 Schemes of arrangement

Schemes of arrangement: explanation

7.6.1 (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 (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 depositary 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).
7.7  UCITS mergers

Application

7.7.1  This section applies to an ICVC, an authorised fund manager of an AUT, ACS or ICVC, any other director of an ICVC and the depositary of any such scheme where, in each case, the AUT, ACS or ICVC is a UCITS scheme that is a party to:

(1) a domestic UCITS merger.

(2) [deleted]

7.7.2  (1) The effect of COLL 7.7.1 R, and in particular the narrow Glossary definition of domestic UCITS merger, is that this section will not apply to a merger in the United Kingdom between two or more UCITS schemes unless one of them was the subject of a UCITS marketing notification before IP completion day.

(2) [deleted]

References to a UCITS scheme

7.7.3  In this section references to:

(1) a UCITS scheme, a merging UCITS or to a receiving UCITS include the sub-fund of any such scheme.

(2) [deleted]

[Note: article 37 of the UCITS Directive]

UCITS mergers

7.7.4  A domestic UCITS merger between two or more UCITS schemes is permissible provided:
(1) it is effected in accordance with the requirements of:
   (a) the UCITS Regulations 2011, which include the need for the FCA to have made a prior order approving the proposed merger (which may be made subject to (2)); and
   (b) this chapter; and

(2) in the case of a UCITS scheme that is:
   (a) a merging UCITS, an extraordinary resolution is approved by unitholders in accordance with COLL 7.6.2 R (3) and (4) (Schemes of arrangement: requirements); and
   (b) a receiving UCITS, the authorised fund manager and depositary of the AUT or ACS and the directors of the ICVC comply with COLL 7.6.2 R (5) and (6).

[Note: articles 39(1), 39(4) and 44 first paragraph of the UCITS Directive]

Meetings of unitholders

7.7.5  
(1) The effect of COLL 7.7.4 R (2)(a) is that the 75% majority that is needed in support for an extraordinary resolution of unitholders to be passed is without prejudice to the presence quorum that is required by COLL 4.4.6 R (Quorum).

(2) Any meeting of unitholders that is needed to give effect to a proposed UCITS merger is subject to the requirements of COLL 4.4 (Meeting of unitholders and service of notices).

UCITS Regulations 2011

7.7.6  
(1) The requirements and the process which must be followed to give effect to a proposal for a domestic UCITS merger are in Part 4 of the UCITS Regulations 2011. The main features of the regime as set out in those provisions include:
   (a) the merger must be a domestic UCITS merger which takes the form of a scheme of arrangement;
   (b) the need for the FCA to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the UCITS Regulations 2011;
   (c) the information that has to be given to the FCA in order to obtain the approval under (b);
   (d) the need for draft terms of merger to be prepared;
   (e) the role of the relevant depositaries and auditors;
   (f) the need for appropriate and accurate information to be prepared for the benefit of unitholders;
   (g) rights of redemption and suspension of dealing in units in the relevant UCITS; and
   (h) the consequences of the proposed merger.

(2) Firms are advised that they do not need to seek approval from the FCA under section 251 (Alteration of schemes and changes of manager or trustee) or 261Q (Alteration of contractual schemes and
Section 7.7 : UCITS mergers

changes of operator or depositary) of the Act or, as the case may be, regulation 21 (The Authority's approval for certain changes in respect of a company) of the OEIC Regulations where they are required to obtain the prior approval of the FCA to a proposed merger under regulation 9 of the UCITS Regulations 2011.

(3) [deleted]

Common draft terms of merger

7.7.7 [R]

(1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger, must in conjunction with any other authorised fund manager draw up common draft terms of the proposed UCITS merger.

(2) The common draft terms in (1) must set out the following particulars:

(a) the UCITS involved;

(b) the background to and the rationale for the proposed UCITS merger;

(c) the expected impact of the proposed UCITS merger on the unitholders of both the merging UCITS and the receiving UCITS;

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the UCITS on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the UCITS Regulations 2011;

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the UCITS merger;

(g) the rules applicable respectively to the transfer of assets and the exchange of units; and

(h) in the case of a UCITS merger where the receiving UCITS or the sub-fund is being specially formed for the purpose, the instrument constituting the fund of the newly constituted receiving UCITS.

[Note: article 40(1) of the UCITS Directive]

7.7.8 [G]

The management companies of the merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of the UCITS merger.

[Note: article 40(2) of the UCITS Directive]
7.7.9 Verification by the depositary

The depositary of a UCITS scheme that is either a merging UCITS or a receiving UCITS in a proposed UCITS merger must verify that the statements in the common draft terms of merger required under COLL 7.7.7 R (2)(a), (f) and (g), to the extent they relate to the scheme for which it is the depositary, conform with the provisions of the regulatory system and the instrument constituting the fund.

[Note: article 41 of the UCITS Directive]

7.7.10 Information to be given to unitholders

(1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger must ensure that a document containing appropriate and accurate information on the merger is provided to the unitholders of that scheme so as to enable them to:

(a) make an informed judgment about the impact of the proposal on their investment;
(b) exercise their rights under regulation 12 (Right of redemption) of the UCITS Regulations 2011; and
(c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers).

(2) Where a UCITS scheme is the merging UCITS in a domestic UCITS merger its authorised fund manager must provide the information document in (1):

(a) to the unitholders of the merging UCITS and (in the case of a domestic UCITS merger) the receiving UCITS only after the FCA has given its approval to the UCITS merger proposal under regulation 9 of the UCITS Regulations 2011,
(b) [deleted]

at least 30 days before the last date by which unitholders may request repurchase or redemption of their units or, where applicable, conversion without additional charge.

(3) The information document to be provided to the unitholders of the merging UCITS and the receiving UCITS under (1) must include the following:

(a) the background to and the rationale for the proposed UCITS merger;
(b) the possible impact of the proposed UCITS merger on unitholders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the UCITS merger;
(c) any specific rights unitholders have in relation to the proposed UCITS merger, including but not limited to:

(i) the right to obtain additional information;
(ii) the right to obtain a copy of the report of the independent auditor or the depositary on request prepared for the purposes of regulation 11 of the UCITS Regulations 2011;

(iii) the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge under regulation 12 of the UCITS Regulations 2011; and

(iv) the last date for exercising that right;

(d) the relevant procedural aspects and the planned effective date of the merger; and

(e) a copy of the key investor information of the receiving UCITS.

(4) If a UCITS marketing notification in respect of the merging UCITS or receiving UCITS has been made, the information document referred to in (3) must be provided in the official language, or one of the official languages, of the relevant EEA State in which units of the UCITS scheme have been marketed, or in a language approved by the overseas regulator in that EEA State. The authorised fund manager of the relevant UCITS scheme must provide an accurate translation of the information document.

[Note: article 43(1), 43(2), 43(3) and 43(4) of the UCITS Directive]

General rules regarding the content of merger information to be provided to unitholders

7.7.11

(1) The information document that must be provided to unitholders under COLL 7.7.10 R (Information to be given to unitholders) by the authorised fund manager of a UCITS scheme must be written in a concise manner and in non-technical language.

(2) [deleted]

(3) The information to be provided to the unitholders of the merging UCITS must meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation, drawing their attention to the key investor information of the receiving UCITS and emphasising the desirability of reading it.

(4) The information to be provided to the unitholders of the receiving UCITS must focus on the operation of the merger and its potential impact on the receiving UCITS.

[Note: article 3 of the UCITS implementing Directive No 2]
(1) The information provided to unitholders under COLL 7.7.10 R and COLL 7.7.13 R on any proposed merger should reflect the different needs of the unitholders of the merging UCITS and the receiving UCITS and assist their understanding of what is being proposed.

(2) The reference to "conversion" in COLL 7.7.10 R (2) means an exchange of units in the merging UCITS or receiving UCITS for units in another UCITS scheme that has similar investment policies and that is managed by the same authorised fund manager or one of its affiliated companies.

[Note: recital (1) of the UCITS implementing Directive No 2]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

(1) The information document that the authorised fund manager of a merging UCITS must provide to its unitholders under COLL 7.7.10 R (3)(b) must also include:

(a) details of any differences in the rights of unitholders of the merging UCITS before and after the proposed UCITS merger takes effect;

(b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both schemes, based on the amounts disclosed in their respective key investor information;

(d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

(e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unitholders who previously held units in the merging UCITS;

(f) in cases where costs associated with the preparation and the completion of the merger may be charged to either the merging or the receiving UCITS or any of their unitholders, details of how those costs are to be allocated; and

(g) an explanation of whether the authorised fund manager of the merging UCITS itself intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) The information to be provided under COLL 7.7.10 R (3)(c) must also include:

(a) details of how any accrued income in each scheme is to be treated; and

(b) an indication of how the report of the independent auditor or the depositary may be obtained.

(3) The information to be provided in accordance with COLL 7.7.10 R (3)(d) must include:
(a) where required by COLL 7.6.2 R (Schemes of arrangement: requirements), the procedure by which unitholders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently; and

(c) when the merger will take effect in accordance with regulation 13 of the UCITS Regulations 2011.

(4) The information to be provided to the unitholders of the merging UCITS must include:

(a) the period during which those unitholders will be able to continue making subscriptions and requesting redemptions of units in the scheme;

(b) the time when those unitholders not making use of their rights granted under regulation 12 of the UCITS Regulations 2011, within the relevant time limit, will be able to exercise their rights as unitholders of the receiving UCITS; and

(c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the unitholders of the merging UCITS, those unitholders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the UCITS Regulations 2011 within the relevant time limit, will become unitholders of the receiving UCITS.

(5) If a summary of the key points of the merger proposal is provided at the beginning of the document providing information on the merger proposal, it must cross-refer to the parts of the document where further information is provided.

[Note: article 4 of the UCITS implementing Directive No 2]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14 R

(1) The information that the authorised fund manager of a receiving UCITS must provide to its unitholders under COLL 7.7.10 R (3)(b) must also include an explanation of whether the authorised fund manager expects the merger to have any material effect on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

(2) In addition to (1), the authorised fund manager of the receiving UCITS must provide to its unitholders the information referred to in COLL 7.7.13 R (2), (3), and (5).

[Note: article 4 of the UCITS implementing Directive No 2]

7.7.15 G

(1) An authorised fund manager may add other information to that which is required by COLL 7.7.10 R to COLL 7.7.14 R if it considers that it is relevant in the context of the proposed UCITS merger. For example, it may be appropriate for the information provided in
accordance with COLL 7.7.13 R (3)(a) to contain a recommendation by the respective *authorised fund manager* of an AUT or ACS or the *directors* of an ICVC as to the course of action the *unitholders* should take.

(2) Where an *authorised fund manager* chooses to include a summary of the key points as allowed by COLL 7.7.13 R (5), its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.

*Note: recitals (2) and (3) and article 4(6) of the UCITS implementing Directive No 2*

### Key investor information

7.7.16 **R**

The *authorised fund manager* of a merging UCITS must provide an up-to-date version of the *key investor information* of the receiving UCITS to its existing *unitholders*.

*Note: article 5(1) of the UCITS implementing Directive No 2*

7.7.17 **R**

[deleted]

### New unitholders

7.7.18 **R**

Between the date when the information required under COLL 7.7.10 R is provided to *unitholders* and the date when the merger takes effect, the information document and the up-to-date *key investor information* of the receiving UCITS must be provided to each person who purchases or subscribes for *units* in either the merging UCITS or the receiving UCITS or who asks to receive copies of the *instrument constituting the fund*, prospectus or *key investor information* of either scheme.

*Note: article 6 of the UCITS implementing Directive No 2*

### Method of providing merger information to unitholders

7.7.19 **R**

The *authorised fund manager* of the merging UCITS and the receiving UCITS must provide the information required by COLL 7.7.10 R to COLL 7.7.14 R to *unitholders* in a *durable medium*.

*Note: article 7 of the UCITS implementing Directive No 2*

### Merger costs

7.7.20 **R**

The *authorised fund manager* of a UCITS *scheme* that is either a merging UCITS or a receiving UCITS must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the UCITS merger are not charged to either scheme or to any of its *unitholders*.

*Note: article 46 of the UCITS Directive*
Effective merger date, exchange ratio calculation date and publication of merger

7.7.21

(1) In a domestic UCITS merger, the effective date of the merger will be the date specified by the FCA in its order authorising the proposed merger in accordance with regulation 9 of the UCITS Regulations 2011.

(2) [deleted]

(3) For the receiving UCITS in a domestic UCITS merger:

(a) the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and

(b) the FCA will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the Act in accordance with regulation 14 of the UCITS Regulations 2011.

(4) [deleted]

[Note: article 47 of the UCITS Directive]

Confirmation obligation on completion of a UCITS merger

7.7.22

The authorised fund manager of the receiving UCITS in a domestic UCITS merger must confirm in writing to the depositary of the UCITS scheme and the FCA that the merger transfer is complete.

[Note: article 48(4) of the UCITS Directive]

7.7.23

Regulation 13 of the UCITS Regulations 2011 sets out the conditions that must be fulfilled for a merger transfer to be considered complete.
7.8 Side pockets

Application

7.8.1 (1) Subject to (2), this section applies to:

(a) the authorised fund manager of an AUT, ACS or an ICVC;
(b) any other director of an ICVC;
(c) the depositary of an AUT, ACS or an ICVC; and
(d) an ICVC,

which is a UCITS scheme or a non-UCITS retail scheme.

(2) This section does not apply to a scheme which is a regulated money market fund.

7.8.2 (1) This section sets out the terms on which the authorised fund manager of a scheme holding affected investments can segregate those affected investments from the other assets held in the scheme property by establishing a side pocket class.

(2) The purpose of the rules in this section is to advance the FCA’s consumer protection and integrity objectives (see s1B(3) of the Act) by helping authorised fund managers deal with the consequences of the Russian invasion of Ukraine.

(3) The rules in this section apply other rules in COLL, where necessary, with appropriate modifications, as well as imposing certain additional requirements.

Financial sanctions regimes relating to Russia

7.8.3 (1) The definition for a ‘sanctioned investment’ in the Glossary (which is incorporated in the definition for ‘affected investment’) relates to the financial sanctions regimes of the Group of 7 (G7) countries comprising Canada, France, Germany, Italy, Japan, the United Kingdom and the United States of America, plus the EU, as those sanctions regimes relate to Russia.

(2) Before deciding whether to create a side pocket class and determining the arrangements under which the class is to operate, the authorised fund manager will need to understand the legal requirements and obligations that apply under the relevant financial sanctions regimes. The authorised fund manager will need to be
satisfied that creation of the side pocket class and the operational arrangements for the class will comply with those regimes.

(3) The UK’s financial sanctions regime is set out in the Russia (Sanctions) (EU Exit) Regulations 2019. The Regulations are available at [https://www.legislation.gov.uk/uksi/2019/855/contents](https://www.legislation.gov.uk/uksi/2019/855/contents) The UK regime prohibits certain types of activity and conduct, including dealing with funds and economic resources, and dealing with transferable securities and money-market instruments, subject to certain exceptions. Contravention of these prohibitions constitutes a criminal offence.

(4) The Office of Financial Sanctions Implementation (OFSI) (part of HM Treasury) helps to ensure that the UK financial sanctions regime is properly understood, implemented and enforced in the United Kingdom.

**Conditions for creating a side pocket class**

(1) If all the conditions in (2) are satisfied, the authorised fund manager of a scheme holding affected investments in the scheme property may, after consulting with the depositary, create a side pocket class.

(2) The conditions are:

(a) The authorised fund manager has determined that the affected investment in (1) is:

(i) a sanctioned investment;

(ii) a unit in a collective investment scheme or a share in an AIF within the meaning of paragraph (2)(b)(vii) of the definition of ‘affected investment’; or

(iii) to the extent not in (i) or (ii), an affected investment for which there are no accurate, reliable and regular prices.

(b) The authorised fund manager has determined that:

(i) creating the side pocket class will protect the interests of unitholders;

(ii) the rights of any unit in a side pocket class will not be unfairly prejudicial to the interests of unitholders generally or to the unitholders of any other class of units in the scheme;

(iii) the issue of units in the side pocket class will be in the best interests of unitholders, the authorised fund and the integrity of the market; and

(iv) all the unitholders in the authorised fund will be treated fairly.

(c) The instrument constituting the fund and the prospectus:

(i) provide for the issue of units in a side pocket class; and

(ii) set out the terms on which that class will operate,

in accordance with the rules in, and applied by, this section (see in particular COLL 7.8.13R (Modified application of COLL 4.2 (Pre-sale notifications))).
(3) Before making the determination in (2)(b), the authorised fund manager must consider:
   (a) at least each of the matters specified in COLL 7 Annex 1 (Matters to be considered by the authorised fund manager before creating a side pocket class); and
   (b) whether it would be in the interest of all the unitholders in the authorised fund to suspend dealings in units in accordance with COLL 7.2.1R (Requirement) instead of creating a side pocket class.

(4) (a) The decision to create a side pocket class pursuant to (1) must be taken by the authorised fund manager’s governing body.
   (b) The authorised fund manager must make a record of the governing body’s decision and the reasons for it.

Side pocket classes

7.8.5

(1) The authorised fund manager may:
   (a) issue units in a new class to unitholders in the authorised fund; or
   (b) convert a unit in an existing class into units in one or more new classes.

(2) Where the authorised fund manager has taken an action pursuant to (1)(a) or (1)(b), it must determine the price of units of each existing and new class by reference to a valuation of the portions of capital property and income property represented by either:
   (a) one or more affected investments held in the scheme property; or
   (b) the scheme property excluding some or any such affected investments,
      as provided for in the instrument constituting the fund and the prospectus.

(3) A new class within (2)(a) is referred to as a ‘side pocket class’.

(4) The authorised fund manager must determine the date and time on which the units in the new class are to be issued.

(5) On the date and time specified in (4):
   (a) the combined net asset value of all units of the new class and all units of the existing class; or
   (b) the combined net asset value of any new classes of unit issued by conversion from an existing class of unit,
      must equal the net asset value of all units of the class or classes that existed immediately before the specified date and time.

(6) On the date and time specified in (4), the number of units held by a unitholder in a new class must be proportionate to the number of units held by them in an existing class immediately before such date and time.
The prospectus of the authorised fund must limit the issue of units in a side pocket class after the date and time specified in COLL 7.8.5R(4) (see COLL 7.8.30R(5) (Modified application of COLL 6.2 (Dealing)).

(1) An authorised fund manager intending to issue units in a new class will need to consider the effect of section 235(4) of the Act. In broad terms, this provides that if the contributions of the participants and the profits or income out of which payments are to be made to them are pooled in relation to separate parts of the scheme property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another (see section 235(4) of the Act (Collective investment schemes)).

(2) The authorised fund manager of an ICVC will also need to consider the effect of section 236(3) (Open-ended investment companies) of the Act. PERG 9.6 (The investment condition (section 236(3) of the Act): general) sets out the FCA’s view of this provision. In particular, PERG 9.6.3G and PERG 9.6.4G provide guidance on situations where an ICVC issues shares or securities that may not satisfy the investment condition.

Allocation of scheme property to a side pocket class

(1) The authorised fund manager will need to consider carefully how to apply a fair accounting treatment when a side pocket class is created.

(2) Where the unit price is determined only by reference to affected investments that are themselves valued at or close to zero, then a unit in the side pocket class will have minimal value. Where a portion of the income property of the scheme is attributable to affected investments, the unit price of the side pocket class should include that element of income.

(3) The authorised fund manager may determine that a proportion of uninvested cash held in the capital property of the scheme should be attributed to the side pocket class, as a provision against costs and charges attributable to the class in the future. This will depend on the authorised fund manager’s policy for the treatment of costs and charges (see also COLL 7.8.36R (Modified application of COLL 6.7 (Payments))). If the side pocket class has an overdrawn cash position, it should not be netted off against a positive cash position attributable to other classes.

(4) Some authorised fund managers may wish to use derivatives and forward transactions within the side pocket class to hedge exposure to currency fluctuations affecting asset valuations, especially if the affected investments acquire value at a later point. Authorised fund managers may also wish to replicate currency class hedging arrangements where these already exist. Such activities will require an allocation of capital property to cover transaction costs and margin requirements.

(5) Decisions whether to undertake the activities in (4) should be taken by the authorised fund manager based on its judgment of unitholders’ reasonable expectations and future best interests. The
authorised fund manager should take particular care to ensure its risk management process is properly applied to analyse the possible harm that could arise from such transactions. See also COLL 7.8.26R (Side pockets: modified application of COLL 5 (Investment and borrowing powers)) and the related guidance in COLL 7.8.27G.

Costs and charges for a side pocket class

(1) The FCA accepts that a side pocket class should bear a proportionate share of the costs and charges which arise and are incurred for the benefit of all unitholders, such as depositary expenses and fees, audit fees, and regulatory charges. The authorised fund manager, in managing and administering the authorised fund, will also incur necessary expenses which it may recover from the scheme property. The FCA would not expect unitholders in classes without any interest in the affected investments to cross-subsidise the costs and charges of managing the side pocket class. Such costs and charges may be recovered in the first instance out of available income or capital attributable to the side pocket class, depending on the normal charging policy set out in the prospectus.

(2) Since it is not possible to know whether any income from affected investments will be receivable on an ongoing basis in future, the authorised fund manager will have to determine how to account for such income and for expenses attributable to the side pocket class. The authorised fund manager may decide to accrue such costs and charges indefinitely until sufficient cash is available to cover them, or to waive some charges or pay them from its own resources. The governing body of the authorised fund manager should consider this when evaluating whether to proceed with creating a side pocket class.

(3) The governing body should also consider whether the authorised fund manager should be remunerated for managing a class that is valued largely or solely by reference to affected investments. To ensure fair treatment of all unitholders in the fund, it may be more appropriate for the authorised fund manager to forgo some or all remuneration from the side pocket class.

(4) An authorised fund manager may be able to charge a fee for managing the side pocket class, but the fee should fairly reflect the services provided and activities carried on by the authorised fund manager for unitholders in that class. The fee should not exceed what is reasonable to cover the necessary costs and charges of the authorised fund manager (including any firm which has been given the mandate to manage investments for the scheme under COLL 6.6.15AR (Committees and delegation)) and to reward the amount of work entailed in seeking opportunities over time to dispose of the affected investments in an orderly way. The FCA would expect such a fee to be less than the authorised fund manager’s charges for managing the rest of the scheme property.

Application of COLL 3 (Constitution)

The rules and guidance in COLL 3 (Constitution) apply to an authorised fund with a side pocket class subject to the modifications specified in COLL 7.8.11R.
In COLL 3.3.5R (Rights of unit classes), paragraphs (2) and (3) do not prohibit the issue of units in a side pocket class.

Application of COLL 4 (Investor relations): General

The rules and guidance in COLL 4 (Investor relations) apply to an authorised fund with a side pocket class, subject to:

1. the modifications in COLL 7.8.13R to COLL 7.8.21R; and
2. the additional requirements in COLL 7.8.22R and COLL 7.8.24R.

Modified application of COLL 4.2 (Pre-sale notifications)

In relation to a side pocket class, the information required to be included in the prospectus under COLL 4.2.5R (Table: contents of prospectus) must cover at least the additional matters set out in (1) to (4).

1. In COLL 4.2.5R(5) (Characteristics of units):
   (a) a general description of the affected investments to be allocated to the side pocket class (or side pocket classes);
   (b) an explanation of how the scheme property (both capital property and income property) will be allocated between the side pocket class (or side pocket classes) and other classes at the outset and on an ongoing basis; and
   (c) information which explains:
      (i) that the authorised fund manager will seek to dispose of all the affected investments over time, on terms that it judges to be in the best interests of unitholders; and
      (ii) that the units in the side pocket class (or side pocket classes) will be cancelled when this has been done, indicating where possible what options may be offered to unitholders for exiting the side pocket class (or side pocket classes) under the process.

2. In COLL 4.2.5R(16) (Valuation and pricing of scheme property), the frequency at which:
   (a) affected investments allocated to the side pocket class will be valued; and
   (b) the prices of units in the side pocket class will be calculated, where these differ from other classes of the scheme.

3. In COLL 4.2.5R(17) (Dealing):
   (a) that the issue of units in the side pocket class is limited, and the circumstances and conditions for issuing them;
   (b) a statement of when the dealing days for the side pocket class will be;
   (c) details of any cut-off point for the receipt of dealing instructions prior to the valuation point for the relevant dealing day; and
   (d) if applicable, details of:
(i) any special arrangements put in place for redemptions of units in the side pocket class, including any extended time period for settlement and any facility to pay the proceeds of redemption to a person other than the unitholder;

(ii) whether redemption proceeds can be reinvested in units of other classes of the scheme or in units of other schemes; and

(iii) any facility for a unitholder to dispose of an interest in units by transferring title to them to another person (other than by operation of law), as a donation or for financial consideration.

(4) In COLL 4.2.5R(27)(b) (Additional information):

(a) an explanation that there is no certainty that any affected investment will ever recover its value to a significant extent, or at all, and that the authorised fund manager may be unable to realise any material value for unitholders in respect of units held in the side pocket class;

(b) if applicable, that the costs and charges for operating the side pocket class may significantly erode the returns from any realisable value from the affected investments over time; and

(c) whether the authorised fund manager has undertaken to bear all the costs and charges associated with operating the side pocket class from its own resources and, if not, a statement explaining:

(i) the risk that costs and charges might cause the cash position of the side pocket class to become overdrawn;

(ii) that a liability arising as a result of (i) would be accounted for against the scheme property allocated to the other classes in the scheme; and

(iii) the steps the authorised fund manager would take to ensure unitholders in other classes do not bear such a liability.

Modified application of COLL 4.3 (Approvals and notifications)

7.8.14 The authorised fund manager need not treat the creation of a side pocket class as a fundamental change for the purposes of COLL 4.3.4R (Fundamental change requiring prior approval by meeting) provided the authorised fund manager is satisfied on reasonable grounds that the foreseeable costs of this course of action are not disproportionate to the benefits.

7.8.15 The guidance in COLL 4.3.5G (Guidance on fundamental change) should be read in accordance with the modification in COLL 7.8.14R.

7.8.16 If the authorised fund manager considers that the creation of a side pocket class constitutes a significant change, the authorised fund manager:

(1) may, but need not, give prior written notice to unitholders under COLL 4.3.6R(1) (Significant change requiring pre-event notification); and

(2) is not required to comply with COLL 4.3.6R(3).
The guidance in COLL 4.3.7G (Guidance on significant changes) should be read in accordance with the modification in COLL 7.8.16R.

Before announcing its intention to create a side pocket class, the authorised fund manager should have regard to the reasonable operational needs of intermediate unitholders and any reasonable periods of time they will need to establish processes and procedures and communicate information to those clients for whom the intermediate unitholder acts as a nominee in relation to units in the scheme.

Modified application of COLL 4.4 (Meetings of unitholders and service of notices)

1. COLL 4.4.8R (Voting rights) applies to an authorised fund with a side pocket class with the modifications set out in (2) and (3) below.

2. Before a resolution is put to a vote at a unitholder meeting, it must be made clear whether the resolution relates to or affects:
   (a) all the classes of unit in the authorised fund;
   (b) those classes of unit in the authorised fund excluding the side pocket class; or
   (c) only the side pocket class.

3. On a poll, the votes of a unitholder may only be counted to the extent that the unitholder’s voting rights are attached to units in the class or classes to which the resolution relates or which the resolution affects in accordance with (2).

The authorised fund manager will need to ensure that the instrument constituting the fund and the prospectus reflect the modified application of COLL 4.4.8R as set out in COLL 7.8.19R.

 COLL 7.8.19R modifies the application of COLL 4.4.8R but does not affect the other matters dealt with in COLL 4.4, such as COLL 4.4.6R (Quorum).

Modified application of COLL 4.7 (Key investor information and marketing communications)

The rules in COLL 4.7.2R (Key investor information) do not require an authorised fund manager to draw up a key investor information document or a NURS-KII document in relation to a side pocket class.

Additional information for unitholders on the creation of a side pocket class

The authorised fund manager must provide a written notification to unitholders which meets the requirements of (1) to (3).

1. The notification must be provided to unitholders in a timely way, either shortly before the side pocket class is created or as soon as practicable afterwards.
(2) If the unitholder has a financial adviser, the requirement to provide the notification in (1) may be satisfied by sending it to the financial adviser.

(3) The notification must explain in a comprehensive manner:

- the reasons for the authorised fund manager’s decision to create a side pocket class, including the expected benefits and the costs and charges;
- the effect on unitholders’ ability to exercise their rights;
- if applicable, the basis on which the authorised fund manager has satisfied itself as to the cost impact of its decision under COLL 7.8.14R;
- a description of the main features of the side pocket class;
- practical information that unitholders will need to understand about the changes to their investment in the authorised fund; and
- each of the matters specified in COLL 7.8.13R(4) (Modified application of COLL 4.2 (Pre-sale notifications)).

(4) The notification must:

(a) be written in clear and plain language;
(b) be provided in a durable medium; and
(c) be accessible by existing and prospective unitholders (e.g. by publishing a copy in a prominent location on the authorised fund manager’s website).

(1) In relation to COLL 7.8.22R(3)(a), the information in the notification should include:

(a) a description of the scheme’s exposure to affected investments and the authorised fund manager’s approach to valuing them;
(b) an explanation of the risks such affected investments pose to the scheme and its unitholders, and the authorised fund manager’s policies for mitigating those risks;
(c) a description of what measures the authorised fund manager is taking as a result of those risks, and in relation to which affected investments;
(d) either a detailed list of the affected investments or a link to a place where they are (or will be) set out, making clear (if applicable) which affected investments are not subject to any of the measures referred to in (c); and
(e) an explanation of the costs and charges to be borne by unitholders in the new classes, and of any resulting change in the costs and charges borne by existing classes.

(2) In relation to COLL 7.8.22R(3)(d), the information in the notification should include:

(a) the name of each side pocket class and a description of how the rights of a unitholder differ from the rights attached to existing classes and any other new classes;
(b) any alteration in the rights attached to an existing class (e.g. that it will be valued without reference to affected investments);

(c) the terms on which new units are issued to existing unitholders, i.e. whether units in a new class are issued in addition to units in an existing class, or by way of conversion into units in one or more new classes;

(d) the terms on which units are issued to both existing and new unitholders; and

(e) the date on which the changes take effect.

(3) In relation to COLL 7.8.22R(3)(e), the information in the notification should include:

(a) an explanation of the dealing arrangements for redemptions, including the dealing days;

(b) if applicable, that dealing in units in the side pocket class has been suspended (see also COLL 7.2.1R(2A), (2B) and (2C) (Requirement));

(c) when and how redemption proceeds will be paid, including any alternative arrangements for payment;

(d) the circumstances in which unitholders may convert their units in a side pocket class to units of another class of the scheme; and

(e) the circumstances in which unitholders may transfer title to their units in the class to another person.

7.8.24  R  The authorised fund manager must, as soon as reasonably practicable after the date on which the side pocket class is created, send a written statement to each unitholder confirming the number and type of units of each class the unitholder holds in the authorised fund as a result of the creation of the side pocket class.

7.8.25  G  The notification required by COLL 7.8.22R and the written statement of holdings required by COLL 7.8.24R may be issued to existing unitholders in a single combined communication. However, it will not be possible to use a single combined communication where the notification required by COLL 7.8.22R is provided to a unitholder's financial adviser instead of the unitholder (see COLL 7.8.22R(2)).

Side pockets: modified application of COLL 5 (Investment and borrowing powers)

7.8.26  R  (1) COLL 5 (Investment and borrowing powers) applies to the side pocket property, subject to the modifications in this rule.

(2) Subject to (4) to (6), in the case of a UCITS scheme, the authorised fund manager must comply with as much of COLL 5.1 (Introduction), COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.3 (Derivative exposure) as is practicable having regard to the limited purpose for which the side pocket class was created.

(3) Subject to (4) to (6), in the case of a non-UCITS retail scheme, the authorised fund manager must comply with as much of COLL 5.1
(Introduction) and COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) as is practicable having regard to the limited purpose for which the side pocket class was created.

(4) The authorised fund manager may only enter into a derivative or a forward transaction which:

(a) is a ‘class hedging transaction’ within the meaning of COLL 3.3.5R(4)(d); and

(b) falls within COLL 3.3.5AR (Hedging of unit classes) (see also COLL 3.3.5BG (Guidance on hedging of unit classes)),

and all provisions of COLL 5 relevant to such transactions apply.

(5) COLL 5.5.3R (Cash and near cash) applies, except that references to the ‘investment objectives’ of the scheme should be read as references to the objective in COLL 7.8.33R(2)(b) (Modified application of COLL 5 for transferable securities, money-market instruments and units in collective investment schemes).

(6) The following rules apply:

(a) COLL 5.5.4R (General power to borrow);

(b) COLL 5.5.5R (Borrowing limits);

(c) COLL 5.5.6R (Restrictions on lending of money);

(d) COLL 5.5.7R (Restrictions on lending of property other than money);

(e) COLL 5.5.8R (General power to accept or underwrite placings);

and

(f) COLL 5.5.9R (Guarantees and indemnities).

Side pockets: guidance on modified application of COLL 5

(1) The nature of a side pocket class means that the authorised fund manager cannot apply the same risk controls to affected investments that would apply to the rest of the scheme property. In the FCA’s view, it would not be practicable for the authorised fund manager to apply a prudent spread of risk to the affected investments or to comply in full with the specific eligibility and risk-spreading limits set out in COLL 5 for transferable securities, money-market instruments and units in collective investment schemes.

(2) However, the modification of the rules provided in COLL 7.8.26R(2) and (3) is to be interpreted narrowly and only to the extent necessary to allow the authorised fund manager to manage the risks of the affected investments allocated to the side pocket class and to deal efficiently with them. In particular, the modifications in those rules do not permit an authorised fund manager to take any action that increases the risk profile of the scheme as a whole, such as acquiring property or entering into transactions that would not be permitted by the unmodified rules of COLL 5.
COLL 7 references to ‘scheme property’ in relation to other parts of the scheme

7.8.28 R
(1) This rule applies to the authorised fund manager and depositary of an authorised fund with a side pocket class.

(2) For the purpose of interpreting references to the ‘scheme property’ in COLL 5 in relation to the part of the scheme which is not a ‘side pocket’, the authorised fund manager and depositary may disregard the side pocket property.

(3) The reference to a ‘side pocket’ in (2) is a reference to a part of the scheme which is represented by units in a side pocket class.

Application of COLL 6 (Operating duties and responsibilities):
General

7.8.29 R
The rules and guidance in COLL 6 (Operating duties and responsibilities) apply in relation to an authorised fund with a side pocket class subject to the modifications specified in COLL 7.8.30R (Modified application of COLL 6.2 (Dealing)) to COLL 7.8.36R (Modified application of COLL 6.7 (Payments)).

Modified application of COLL 6.2 (Dealing)

7.8.30 R
(1) COLL 6.2 (Dealing) applies to a side pocket class subject to the modifications specified in this rule.

(2) For the purposes of COLL 6.2.8R (Issue and cancellation of units through an authorised fund manager), if the authorised fund manager redeems a unit in a side pocket class from a unitholder, the authorised fund manager must immediately cancel the unit or, in relation to an AUT or ACS, instruct the depositary to do so.

(3) (a) Subject to (b) and (c), the requirement in COLL 6.2.13R (Payment for units issued) may be satisfied by the authorised fund manager allocating such proportion of the scheme property to that class as the authorised fund manager may determine.

(b) Before making the allocation of scheme property in (a), the authorised fund manager must consult the depositary and take its views into account.

(c) After being consulted under (b), the depositary must consider the proposed allocation of the scheme property and inform the authorised fund manager if it considers that the allocation is not appropriate, having regard to the purpose of the side pocket class.

(4) In COLL 6.2.16R (Sale and redemption), in relation to the redemption of units in a side pocket class:

(a) paragraphs (4) and (5) apply unless the prospectus makes alternative provision for how unitholders may be paid; and

(b) paragraphs (5A), (6) and (7) do not apply.

(5) The authorised fund manager must apply COLL 6.2.18R (Limited issue) as follows:
(a) COLL 6.2.18R(1) applies to the issue of units in a side pocket class;

(b) COLL 6.2.18R(2) does not apply to a side pocket class, and the authorised fund manager must not provide for the further issue of units in the same class; and

(c) COLL 6.2.18R(3) applies where a scheme has a side pocket class.

Modified application of COLL 6.3 (Valuation and pricing)

7.8.31  
(1) COLL 6.3 (Valuation and pricing) applies in relation to a side pocket class subject to the modifications specified in this rule (see also COLL 7.8.32G).

(2) For the purpose of COLL 6.3.5R (Price of a unit), the authorised fund manager must ensure that the price of a unit in a side pocket class is calculated:

(a) by reference to the net value of the side pocket property; and

(b) in accordance with the provisions of both the instrument constituting the fund and the prospectus.

(3) Notwithstanding COLL 6.3.11R (Publication of prices), the authorised fund manager must make public in an appropriate manner the price of a unit in the side pocket class after every valuation point (see COLL 6.3.4R (Valuation points)), even if the authorised fund manager is not holding itself out to deal in such units at that valuation point.

7.8.32  
The guidance in COLL 6.3.12G(1)(a) to (c) is unlikely to be relevant to an authorised fund manager when publishing the price of a unit in a side pocket class in accordance with the rules in this section.

Modified application of COLL 6.6 (Operating duties and responsibilities)

7.8.33  
(1) COLL 6.6 (Operating duties and responsibilities) applies to the authorised fund manager and depositary of an authorised fund with a side pocket class, subject to the modifications specified in this rule and COLL 7.8.34R (Modified application of the assessment of value rules).

(2) For the purposes of COLL 6.6.3R(3)(a) (Functions of the authorised fund manager), the authorised fund manager must make decisions as to the constituents of the scheme property:

(a) in accordance with the investment objectives and policy of the scheme, but may disregard any affected investment in the side pocket property; and

(b) with a view to disposing of those affected investments over time as and when the authorised fund manager considers this can be done in the best interests of unitholders.

(3) For the purposes of COLL 6.6.4R(1) (General duties of the depositary), the depositary must take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with the matters specified in COLL 6.6.4R(1)(a) to (e) as modified by the rules in this section, and COLL 6.6.4R(2) is to be read accordingly.
(4) (a) The duty in COLL 6.6.14R(2) (Duties of the depositary and the authorised fund manager: investment and borrowing powers) requiring the authorised fund manager to rectify at its own expense a breach of COLL 5 (Investment and borrowing powers), or any provision of the instrument constituting the fund or the prospectus, does not apply to the extent that:

(i) the breach relates to affected investments in the side pocket property; and

(ii) the depositary is satisfied that it is not practicable for the authorised fund manager to comply with the relevant rule in COLL 5, the provision of the instrument constituting the fund or the prospectus.

(b) COLL 6.6.14R(4), (5) and (6) do not apply to the extent that the breach falls within (a) above.

**Modified application of the assessment of value rules**

When conducting an assessment of value for the purposes of COLL 6.6.20R (Assessment of value) in relation to a scheme that has a side pocket class, the authorised fund manager:

(1) must consider each of the matters included in COLL 6.6.21R (Table: minimum considerations – assessment of value) in relation to the scheme as a whole, including the side pocket class, but may adopt a proportionate approach to the assessment as it applies specifically to the side pocket class;

(2) in relation to the side pocket class, need not consider a matter included in COLL 6.6.21R if, in all the circumstances, it is not relevant to that class;

(3) must consider whether, to the extent that payments are being made out of the scheme property attributable to the side pocket class or are being accrued for that purpose, those payments:

(a) are justified in terms of the value delivered to unitholders in the side pocket class; and

(b) are not prejudicial to the interests of unitholders of other classes; and

(4) must consider whether it remains in unitholders’ best interests for the side pocket class to continue in operation.

(1) In relation to COLL 7.8.34R(1), the authorised fund manager should consider the side pocket class when carrying out an assessment of value for a scheme. A side pocket class, because of its special purpose, might in isolation represent poor value according to the standard criteria for assessment, so the authorised fund manager should take account of that purpose in order to reach a proportionate assessment. However, where payments are being taken out of the side pocket property, the assessment of overall value delivered to unitholders in the scheme should give due weight to the impact of those payments.

(2) In relation to COLL 7.8.34R(3)(a), the authorised fund manager should consider whether the payments out of scheme property can be
justified when compared with the value it reasonably expects that unitholders might receive from any eventual disposal of the affected investments, taking into account current market conditions and relevant political and economic developments.

(3) In relation to COLL 7.8.34R(3)(b), it is likely to be unfair or prejudicial to unitholders’ best interests for costs and charges borne by the side pocket class to be attributable to unitholders in other classes.

Modified application of COLL 6.7 (Payments)

7.8.36 (1) COLL 6.7 (Payments) applies in relation to an authorised fund with a side pocket class subject to the modifications and additional requirements specified in this rule.

(2) The authorised fund manager must not impose any of the following charges or levies on unitholders of the side pocket class:
   (a) a preliminary charge or levy when the units in the side pocket class are issued;
   (b) a charge or levy on the redemption or cancellation of units;
   (c) a performance-related management fee.

(3) The authorised fund manager must prevent undue costs being charged to the scheme and its unitholders.

[Note: In relation to (3), see also COLL 6.6A.2R(5) (Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholders) and article 17 of the AIFMD level 2 regulation (Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market).]

Application of COLL 7.2 (Suspension and restart of dealings)

7.8.37 (1) COLL 7.2 (Suspension and restart of dealings) applies in relation to a side pocket class subject to the modifications specified in this rule.

(2) The authorised fund manager may suspend dealings in units of a side pocket class, while continuing to deal in other classes of the scheme.

(3) If the authorised fund manager suspends dealings in accordance with (1), it is not required to carry out any request by a unitholder to convert units in the suspended side pocket class into units of another class in which dealing continues.

(4) COLL 7.2.1R applies to the suspension of dealings in units of a side pocket class under (2).
Matters to be considered by the authorised fund manager before creating a side pocket class

<table>
<thead>
<tr>
<th>1.</th>
<th>Investment risk considerations</th>
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<tbody>
<tr>
<td>(1)</td>
<td>Whether there is agreement on which affected investments should be allocated to a side pocket class.</td>
</tr>
<tr>
<td>(2)</td>
<td>The possible impact of relevant sanctions regimes.</td>
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<td>(3)</td>
<td>The authorised fund manager’s estimate of the likelihood of the affected investments achieving a realisable value within a range of timeframes.</td>
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<tr>
<td>(4)</td>
<td>Whether the authorised fund manager intends to invest in affected countries if the economic situation stabilises and relevant sanctions regimes allow it and, if so, how that might affect unitholders in the side pocket class.</td>
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<tr>
<td>(5)</td>
<td>Whether the authorised fund manager’s risk management function (see COLL 6.11 (Risk control and internal reporting)) has assessed the likely consequences for the authorised fund manager, the authorised fund and its unitholders if the authorised fund manager were to take no action to set up a side pocket class.</td>
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<tr>
<td>(6)</td>
<td>That there is a risk management plan which considers different scenarios for what might happen to the affected investments allocated to the side pocket class and how such scenarios would be dealt with.</td>
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<th>2.</th>
<th>Costs</th>
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<tr>
<td>(1)</td>
<td>The authorised fund manager’s estimated one-off costs of establishing the side pocket class and whether these costs will be met by the authorised fund manager, or paid from the scheme property of the authorised fund, or apportioned between both.</td>
</tr>
<tr>
<td>(2)</td>
<td>The authorised fund manager’s estimated on-going annual costs of operating the side pocket class, and the provision being made to pay these costs:</td>
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<tr>
<td>(a)</td>
<td>over various scenarios as to the duration of the class; and</td>
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<td>(b)</td>
<td>(to the extent they differ) in relation to the scenarios considered by...</td>
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This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

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<td>(3)</td>
<td>Whether the authorised fund manager will take a fee for managing the side pocket class and, if so, what factors have been considered to determine whether it is set at a fair level and to prevent unitholders from being charged undue costs.</td>
</tr>
<tr>
<td>(4)</td>
<td>How the total costs, borne by a unitholder holding units in both the side pocket class and a class relating to unaffected investments, will compare to the total cost that the unitholder currently bears.</td>
</tr>
<tr>
<td>(5)</td>
<td>If the future total cost for unitholders is expected to be higher than the current cost, how this will be justified to unitholders against the uncertain benefit of a future realisation of value in the side pocket class.</td>
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3. Legal and operational considerations

(1) The authorised fund manager’s legal advice on the implications of setting up a side pocket class, having regard to s235(4) and, in the case of an ICVC, s236(3) of the Act (see the guidance in COLL 7.8.7G).

(2) Whether the authorised fund’s auditor has been consulted and its view taken into account.

(3) Whether the authorised fund manager is satisfied that all operational functions for which it is responsible, including fund accounting and transfer agency functions, are able to fully support the side pocket class.

(4) The authorised fund manager’s assessment of the readiness of firms to implement and maintain arrangements for the side pocket class to operate effectively, such as those that arrange or deal in units in the authorised fund, providers of SIPPs and providers of linked funds.

4. Longer-term investor considerations

(1) The authorised fund manager’s policy for allowing unitholders to exit the class during its lifetime.

(2) The authorised fund manager’s view of the likely future options for enabling the side pocket class to be terminated.

5. Overall assessment

Whether the governing body of the authorised fund manager is satisfied that:

(1) the potential benefits to unitholders of units in any side pocket class are proportionate to the estimated costs of establishing and running the class, including over the long term;
This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

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<td>(2)</td>
<td>proceeding to set up the <em>side pocket class</em> will be in the best interests of the <em>authorised fund</em> and its <em>unitholders</em>; and</td>
</tr>
<tr>
<td>(3)</td>
<td>the <em>depositary</em> has been properly consulted and its view taken into account.</td>
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COLL 7 : Suspension of dealings, termination of authorised funds and side pockets
8.1 Introduction

Application

8.1.1 (1) This chapter applies to:
   (a) an authorised fund manager of an AUT, ACS or an ICVC;
   (b) any other director of an ICVC;
   (c) a depositary of an AUT, ACS or an ICVC; and
   (d) an ICVC,
   which is a qualified investor scheme.

(2) Where this chapter refers to rules in any other chapter of this sourcebook, those rules and any relevant guidance should be applied as if they referred to qualified investor schemes.

Purpose

8.1.2 (1) This chapter assists in achieving the statutory objective of protecting consumers by providing an appropriate degree of protection in respect of authorised funds that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in retail schemes.

(2) This section ceases to apply where a qualified investor scheme has converted to be authorised as a UCITS scheme or a non-UCITS retail scheme.

Qualified investor schemes: eligible investors

8.1.3 (1) Subject to (3), the authorised fund manager of a qualified investor scheme must take reasonable care to ensure that ownership of units in that scheme is recorded in the register only for a person to whom such units may be promoted under COBS 4.12.4R.

(2) The authorised fund manager will be regarded as complying with (1) and (3) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

(3) In addition to (1), the authorised contractual scheme manager of a qualified investor scheme which is an ACS must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that meets the criteria set out in ■COLL 8 Annex 2 R (ACS Qualified Investor Schemes: eligible investors).
Qualified investor schemes - explanation

8.1.4 (1) Qualified investor schemes are authorised funds which are intended only for professional clients and for retail clients who are sophisticated investors. For this reason, qualified investor schemes are subject to a restriction on promotion under ■ COBS 4.12.3 R. See also ■ COBS 4.12.13 G.

(1A) The authorised contractual scheme manager of a qualified investor scheme which is an ACS must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to a person to whom such units may be promoted under ■ COBS 4.12.4 R and who also meets the criteria in ■ COLL 8 Annex 2.

(2) Accordingly, qualified investor schemes have a more relaxed set of rules governing their operation and in particular their investment powers than for retail schemes. A qualified investor scheme is essentially a mixed asset type of scheme where different types of permitted asset may be included as part of the scheme property, depending on the investment objectives and policy of that scheme and within any restrictions in the rules.

Application and notification procedures

8.1.5 Details of the application procedures in respect of qualified investor schemes are contained in ■ COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the FCA.
8.2 Constitution

Application

R8.2.1 This section applies to an authorised fund manager in respect of a qualified investor scheme.

Classes of unit

R8.2.2 A qualified investor scheme may issue such classes of unit as are set out in the instrument constituting the fund, provided the rights of any class are not unfairly prejudicial as against the interests of the unitholders of any other class of units in that scheme.

Names of schemes, sub-funds, and classes of units

R8.2.3 (1) The authorised fund manager must ensure that the name of the scheme, a sub-fund or a class of unit is not undesirable or misleading.

(2) Paragraph (3) applies to an authorised fund manager of a qualified investor scheme, an ICVC which is such a scheme, and any other directors of such an ICVC.

(3) The scheme or sub-fund:

(a) must not use ‘Long-Term Asset Fund’ or ‘LTAF’ in its name; and

(b) must not otherwise suggest through its name that it is a fund which invests in long-term assets or describe itself as such.

Undesirable and misleading names

R8.2.4 (1) COLL 6.9.6G (Undesirable and misleading names) contains guidance as to names which may be undesirable or misleading.

(2) The term ‘Long-Term Asset Fund’ or ‘LTAF’ is reserved for long-term asset funds (see COLL 15).

(3) Only AIFs that are authorised in accordance with the LTIF Regulation may use the designation ‘LTIF’ or ‘long-term investment fund’.

Instrument constituting the fund

R8.2.5 The statements and provisions required by COLL 8.2.6 R must be included in the instrument constituting the fund of a qualified investor scheme.


Table: contents of the instrument constituting the fund

This table belongs to COLL 8.2.5 R

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**Property Authorised Investment Funds**

1A For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units in accordance with 6A if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

2 Constitution

The following statements:

(1) the scheme property of the scheme is entrusted to a depository for safekeeping (subject to any exception permitted by the rules);

(2) if relevant, the duration of the scheme is limited and, if so, for how long;

(3) charges and expenses of the scheme may be taken out of scheme property;

(4) for an ICVC:

(a) what the maximum and minimum sizes of the scheme’s capital are; and

(b) the unitholders are not liable for the debts of the company;

(4A) for an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;

(4B) for a co-ownership scheme which is an umbrella, the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund;
(4C) for a limited partnership scheme, that the scheme prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the scheme property, with the effect that the scheme cannot be an umbrella;

(5) for an AUT:

(a) the trust deed:

(i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;

(ii) is binding on each unitholder as if he had been a party to it and that he is bound by its provisions; and

(iii) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms;

(b) subject to the provisions of the trust deed and all the rules made under section 247 of the Act (Trust scheme rules):

(i) the scheme (other than sums held to the credit of the distribution account) is held by the trustee on trust for the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and

(ii) the sums standing to the credit of any distribution account are held by the trustee on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);

(c) a Unitholder is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds; and

(d) payments to the trustee by way of remuneration are authorised to be paid (in whole or in part) out of the scheme property; and

(6) for an ACS:

(a) the contractual scheme deed:

(i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;

(ii) is binding on each unitholder as if he had been a party to it and that he is bound by its provisions;

(iii) authorises and requires the depositary and the authorised contractual scheme manager to do the things required or permitted of them by its terms; and

(iv) states that units may not be issued to a person other than a person:

(A) who is a:

(i) professional ACS investor;

(ii) large ACS investor; or
(iii) person who already holds units in the scheme; and

(B) to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R;

(v) states that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (iv)(A) and (B);

(vi) states that for a co-ownership scheme:

(A) the scheme property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants);

(B) the arrangements constituting the scheme are intended to constitute a co-ownership scheme as defined in section 235A(2) of the Act; and

(C) the operator and depositary are required to wind up the scheme if directed to do so by the FCA in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the Act;

(vii) states:

(A) whether the transfer of units in the ACS scheme or, for a co-ownership scheme which is an umbrella (sub-funds of which pursue differing policies in relation to transfer of units), in each particular sub-fund, is either:

(i) prohibited; or

(ii) allowed;

(B) where transfer of units is allowed by the scheme or, where appropriate the sub-fund, in accordance with (A)(ii), units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person:

(i) who is a:

(1) professional ACS investor; or

(2) large ACS investor; or

(3) person who already holds units in the scheme; and
(ii) to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R; and

(viii) states that for a limited partnership scheme, the scheme is not dissolved on any person ceasing to be a limited partner or nominated partner provided that there remains at least one limited partner;

(b) subject to the provisions of the contractual scheme deed and all the rules made under section 261I of the Act (Contractual scheme rules) and for the time being in force:

(i) the scheme property (other than sums standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and

(ii) the sums standing to the credit of any distribution account are held by the depositary to distribute or apply them in accordance with COLL 8.5.15 R(Income); and

(c) a unitholder in a co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds;

(d) a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;

(e) the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business;

(f) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(g) the operator of a co-ownership scheme is authorised to:

(i) acquire, manage and dispose of the scheme property; and

(ii) enter into contracts which are binding on unitholders for the purposes of, or in connection with, the acquisition, management or disposal of scheme property.

3 Investment objectives

A statement of the object of the scheme, in particular the types of investments and assets in which it and each sub-fund (where applicable) may invest and that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk.
4 Units in the scheme
A statement of:
   (1) the classes of units which the scheme may issue, indicating, for a scheme which is an umbrella, which class or classes may be issued in respect of each sub-fund; and
   (2) the rights attaching to units of each class (including any provisions for the expression in two denominations of such rights).

5 Limitation on issue of and redemption of units
Details as to:
   (1) the provisions relating to any restrictions on the right to redeem units in any class; and
   (2) the circumstances in which the issue of the units of any particular class may be limited.

6 Income and distribution
Details of the person responsible for the calculation, transfer, allocation and distribution of income for any class of unit in issue during the accounting period.

Redemption or cancellation of units on breach of law or rules
6A A statement that where any holding of units by a unitholder is (or is reasonably considered by the authorised fund manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.

7 Base currency
A statement of the base currency of the scheme.

8 Meetings
Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for unitholders.

9 Powers and duties of the authorised fund manager and depositary
Where relevant, details of any function to be undertaken by the authorised fund manager and depositary which the rules in COLL require to be stated in the instrument constituting the fund.

10 Termination and suspension
Details of:
   (1) the grounds under which the authorised fund manager may initiate a suspension of the scheme and any associated procedures; and
   (2) the methodology for determining the rights of unitholders to participate in the scheme property on winding up.

10A Investment in overseas property through an intermediate holding vehicle
If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

11 Other relevant matters
Details of those matters which enable the scheme, authorised fund manager or depositary to obtain any privilege or power conferred
Limited issue

8.2.7 R

Units whose issue may be limited can only be issued if permitted by the instrument constituting the fund, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.
8.3 Investor relations

Application

8.3.1 This section applies to an ICVC which is a qualified investor scheme and the authorised fund manager of a qualified investor scheme.

Drawing up and availability of a prospectus

8.3.2 (1) An authorised fund manager must ensure that a prospectus of a qualified investor scheme is drawn up which contains the information, specified in COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the authorised fund manager must:

(a) revise the prospectus immediately upon the occurrence of any materially significant change in the information required to be stated within it;

(b) include the date of any revision in a prominent manner in the revised prospectus;

(c) send a copy of the original and any revised prospectus to the FSA;

and

(d) review the prospectus periodically and revise it to take account of any significant change or new matter.

(1A) A full-scope UK AIFM that is the authorised fund manager of a qualified investor scheme must also ensure that the prospectus contains the information for investors required by:

(i) FUND 3.2.2R and FUND 3.2.3R (Prior disclosure of information to investors); and

(ii) FUND 3.2.5R and FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the scheme's most recent annual report or half-yearly report.

(2) The prospectus must not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units.

(3) An ICVC or the authorised fund manager of an AUT or ACS must offer a copy of the scheme's most recent prospectus free of charge to any person eligible to invest in a qualified investor scheme prior to the purchase of any units.

8.3.2A G

(1) The PRIIPs Regulation requires the manufacturer of a PRIIP to draw up a key information document in accordance with the PRIIPs...
Regulation before that PRIIP is made available to retail investors (as defined in the PRIIPs Regulation).

(2) The requirements of the PRIIPs Regulation form part of UK law.

(3) As a result, when a qualified investor scheme is made available to retail clients the authorised fund manager will need to prepare a key information document in accordance with the PRIIPs Regulation, in addition to the prospectus.

False or misleading prospectus

The authorised fund manager must ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by the rules in this sourcebook to be included in it.

Table: contents of qualified investor scheme prospectus

1 Document status
   A statement that this document is the prospectus of the authorised fund valid as at a particular date which shall be the date of the document.

2 Description of the authorised fund
   Information detailing:
   (1) the name of the authorised fund;
   (1A) its FCA product reference number (PRN);
   (2) that the authorised fund is either an ICVC, ACS or an AUT;
   (3) that the scheme is a qualified investor scheme;
   (4) where relevant, that the unitholders in an ICVC are not liable for the debts of the authorised fund;
   (5) where relevant, the address of the ICVC’s head office and the address in the United Kingdom for service on the ICVC of documents required or authorised to be served on it;
   (6) the effective date of the authorisation order made by the FCA and, if the duration of the authorised fund is not unlimited, when it will or may terminate;
   (7) the base currency for the authorised fund;
   (8) where relevant, the maximum and minimum sizes of the ICVC’s capital;
   (9) the circumstances in which the authorised fund may be wound up under the rules in COLL and a summary of the procedure for, and the rights of unitholders under, such a winding up; and
   (10) for an ACS that is a limited partnership scheme, the address of the proposed principal place of business of the limited partnership scheme.

3 Investment objectives and policy
   (1) Sufficient information to enable a unitholder to ascertain:
(a) the investment objectives of the *authorised fund*;
(b) the *authorised fund’s* investment policy for achieving those investment objectives, including:
   (i) the general nature of the portfolio and any intended specialisation;
   (ii) the policy for the spreading of risk in the *scheme property*; and
   (iii) the policy in relation to the exercise of borrowing powers;
(c) a description of any restrictions in the assets in which investment may be made; and
(d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.

(2) For investment in immovables:
(a) the countries or territories of immovables in which the *authorised fund* may invest;
(b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
(c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.

(3) If intended, whether the *scheme property* may consist of units in collective investment schemes (*second schemes*) which are managed by or operated by the *authorised fund manager* or by one of its associates and a statement as:
   (a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and
   (b) the extent to which any such charges will be reimbursed to the *scheme*.

(4) If intended, whether the *scheme* may enter into stock lending transactions and, if so, what procedures will operate and what *collateral* will be required.

(5) Where a *scheme* is a feeder *scheme* which (in respect of investment in units in a single collective investment *scheme*) is dedicated to units in a collective investment *scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the feeder *scheme* may make in it;

4 **Distributions and accounting dates**

Relevant details of accounting and distribution dates and a description of the procedures:

(1) for determining and applying income (including how any distributable income is paid); and
(2) relating to unclaimed distributions.

5 **The characteristics of units in the authorised fund**

Information as to:
(1) the names of the classes of units in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes;

(2) how unitholders may exercise their voting rights and what these are; and

(3) the circumstances where a mandatory redemption, cancellation or conversion of units from one class to another may be required.

### 5A Issue of units in ACSs: eligible investors

(1) A statement that units may not be issued to a person other than to a person:

   (a) who is a:

      (i) professional ACS investor; or

      (ii) large ACS investor; or

      (iii) person who already holds units in the scheme; and

   (b) to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R.

(2) A statement that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (1).

### 5B Transfer of units in ACSs

(1) A statement whether the transfer of units in the ACS scheme is either:

   (a) prohibited; or

   (b) allowed;

   by the instrument constituting the fund and prospectus.

(2) A statement that where transfer of units is allowed by the instrument constituting the fund and prospectus in accordance with (1)(b), units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person:

   (a) who is a:

      (i) professional ACS investor; or

      (ii) large ACS investor; or

      (iii) person who already holds units in the scheme; and

   (b) to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R.

(3) For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the sub-funds. Where individual sub-funds
have differing policies in relation to transfer of units, separate statements are required.

6 The authorised fund manager
The following particulars of the authorised fund manager:

(1) its name and the nature of its corporate form;
(2) the country or territory of its incorporation;
(3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
(4) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
(5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the United Kingdom;
(6) the amount of its issued share capital and how much of it is paid up;
(7) for an ICVC, a summary of the material provisions of the contract between the ICVC and the authorised fund manager which may be relevant to unitholders including provisions (if any) relating to termination, compensation on termination and indemnity; and
(8) for an AUT, the names of the directors of the authorised fund manager.

7 Directors of an ICVC, other than the ACD
Other than for the ACD:

(1) the names and positions in the ICVC of the directors; and
(2) the manner, amount and calculation of the remuneration of the directors.

8 The depositary
The following particulars of the depositary:

(1) its name and the nature of its corporate form;
(2) the country or territory of its incorporation;
(3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and
(4) if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom.

9 The investment adviser
If an investment adviser is retained in connection with the business of the authorised fund, its name and whether or not it is authorised by the FCA.

10 The auditor
The name of the auditor of the authorised fund.

11 The register of Unitholders
Details of the address in the United Kingdom where the register of unitholders is kept and can be inspected by unitholders.

12 Payments out of the scheme property
The payments that may be made out of the scheme property to
any person whether by way of remuneration for services, or reimbursement of expense and for each category of remuneration or expense, the following should be specified:

1. the current rates or amounts of such remuneration;
2. how the remuneration will be calculated and accrue and when it will be paid;
3. if notice has been given to unitholders of the authorised fund manager’s intention to:
   a) introduce a new category of remuneration for its services; or
   b) increase the basis of any current charge; or
   c) change the basis of the treatment of a payment from the capital property set out in COLL 8.5.13 R (2) (Payments);

   particulars of that introduction or increase and when it will take place;
4. the types of any other charges and expenses that may be taken out of the scheme property; and
5. if, in accordance with COLL 8.5.13 R (2), all or part of the remuneration or expense are to be treated as a capital charge:
   a) that fact; and
   b) the basis of the charge which may be so treated.

13 Dealing
Details of:
1. the dealing days and times in the dealing day on which the authorised fund manager will receive requests for the sale and redemption of units;
2. the procedures for effecting:
   a) the issue and cancellation of units;
   b) the sale and redemption of units; and
   c) the settlement of transactions;
3. the steps required to be taken by a unitholder in redeeming units before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in COLL 8.5.11 R (3) (Sale and redemption) may be applied;
4. the circumstances in which the redemption of units may be suspended;
5. the days and times in the day on which recalculation of the price will commence;
6. details of the minimum number or value of each type of unit in the authorised fund which:
   a) any one person may hold; and
   b) may be the subject of any one transaction of sale or redemption;
7. the circumstances in which the authorised fund manager may arrange for, and the procedure for, a redemption of units in specie;
(8) the circumstances in which the further issue of units in any particular class may be limited and the procedures relating to this:

(9) the circumstances in which direct issue or cancellation of units by the ICVC or the depositary of an AUT or ACS (as appropriate) may occur and the relevant procedures for such issues and cancellations;

(10) whether a unitholder may effect transfer of title to units on the authority of an electronic communication and if so the conditions that must be satisfied in order to effect a transfer; and

(11) if the authorised fund manager deals as principal in units of the scheme and holds them for that purpose, a statement of its policy for doing so and, where applicable:

(a) a description of when the authorised fund manager may retain any profits it earns and absorb any losses it incurs for these activities; and

(b) a statement of non-accountability as referred to in COLL 8.5.14G.

14 Valuation of scheme property
Details as to:

(1) how frequently and at what times of the day the scheme property will be regularly valued to determine the price at which units in the scheme may be purchased from or redeemed by the authorised fund manager and a description of any circumstance where the scheme property may be specially valued;

(2) in relation to each purpose for which the scheme property must be valued, the basis on which it will be valued; and

(3) how the price of units of each class will be determined, including a statement that a forward price basis is to be applied.

15 Sale and redemption charges
If the authorised fund manager makes any charges on sale or redemption of units, details of the charging structure and how notice will be provided to unitholders of any increase.

15A Property Authorised Investment Funds
For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

16 General information
Details as to:

(1) when annual and half-yearly reports will be published; and

(2) the address at which copies of the instrument constituting the fund, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

17 Information on the umbrella

In the case of a scheme which is an umbrella, the following information:

(1) that a unitholder may exchange units in one sub-fund for units in another sub-fund and that such an exchange is treated as a redemption and sale;

(2) what charges may be made on exchanging units in one sub-fund for units in other sub-funds;

(3) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;

(4) in respect of each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the umbrella;

(5) for an ICVC or a co-ownership scheme, that:

(a) for an ICVC, its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;

(aa) for a co-ownership scheme, the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund; and

(b) for an ICVC or a co-ownership scheme, while the provisions of the OEIC Regulations, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the Act in the case of co-ownership schemes, provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations or, as the case may be, section 261P of the Act; and

(6) the FCA product reference number (PRN) of each sub-fund.

18 Application of the prospectus contents to an umbrella
For a scheme which is an umbrella, information required must be stated:

1. in relation to each sub-fund where the information for any sub-fund differs from that for any other; and
2. for the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.

18A Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles a statement disclosing the existence of that intermediate holding vehicle or series of intermediate holding vehicles and confirming that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles is to enable the holding of overseas immovables by the scheme.

18B Information on authorised contractual schemes

A statement that:

1. a unitholder in a co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds;
2. a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;
3. the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business; and
4. the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants).

19 Additional information

Any other material information which is within the knowledge of the directors of an ICVC or the authorised fund manager of an AUT or ACS, or which the directors or authorised fund manager would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by so participating.

Pre-sale information to be made available on securities financing transactions and total return swaps

The Securities Financing Transactions Regulation sets out the additional information which an authorised fund manager who is a full-scope UK AIFM of a qualified investor scheme must make available to investors before they invest.

■ COLL 4.2.5BEU and ■ COLL 4.2.5CEU copy out the relevant provisions of that regulation.
An authorised fund manager who is a full-scope UK AIFM of a qualified investor scheme should publish the information in the scheme prospectus.

An authorised fund manager of a qualified investor scheme that does not use securities financing transactions or total return swaps is not required to include the information in COLL 4.2.5CEU in the prospectus or other pre-sale documents.

[Note: A transitional provision applies to COLL 8.3.4AG: see COLL TP 1.39G]

Report and accounts

8.3.5

(1) The authorised fund manager must prepare a report in respect of each annual accounting period and half-yearly accounting period.

(2) [deleted]

(2A) Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

(3) The authorised fund manager must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any unitholder.

(3A) The timing of the publication of the annual report in (3) is subject to FUND 3.3.3R if the authorised fund manager is a full-scope UK AIFM.

(4) [deleted]

(5) The authorised fund manager must provide free of charge on the request of any person eligible to invest in the scheme a copy of the latest annual or half-yearly report before the conclusion of any sale to such person.

(6) The authorised fund manager must provide a copy of each annual and half-yearly report to the FCA.

(7) For a scheme which is an umbrella, any annual report provided under (3) or (5) may be a report prepared under COLL 8.3.5AR (3), but the authorised fund manager must nevertheless provide free of charge the report prepared under COLL 8.3.5AR (2) if a unitholder or any other person eligible to invest in the scheme requests it.

Contents of the annual report

8.3.5A

(1) An annual report, other than for a scheme which is an umbrella, must contain:

(a) the accounts for the annual accounting period prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 8.3.5C R (Authorised fund manager’s report);

(bA) comparative information in accordance with COLL 4.5.10R (1A) and (2A) (Comparative information);
(c) the report of the depositary in accordance with COLL 8.3.5D R (Report of the depositary);

(d) the report of the auditor in accordance with COLL 4.5.12 R (Report of the auditor); and

(e) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R.

(2) An annual report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund:

(i) the accounts required by (1)(a);

(ii) the report of the authorised fund manager in accordance with COLL 8.3.5C R;

(iii) comparative information in accordance with COLL 4.5.10R (1A) and (2A); and

(iv) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R;

(b) [deleted]

(c) the report of the depositary in accordance with COLL 8.3.5D R; and

(d) the report of the auditor in accordance with COLL 4.5.12 R.

(3) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further annual report for any one or more individual sub-funds of the umbrella, in which case it must contain:

(a) for the sub-fund:

(i) the accounts required by (1)(a);

(ii) the report of the authorised fund manager in accordance with COLL 8.3.5C R; and

(iii) comparative information in accordance with COLL 4.5.10R (1A) and (2A);

(b) the report of the depositary in accordance with COLL 8.3.5D R; and

(c) the report of the auditor in accordance with COLL 4.5.12 R.

(4) The directors of an ICVC or the authorised fund manager of an AUT or ACS must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund or sub-fund for the relevant annual accounting period, and of the financial position of the authorised fund or sub-fund as at the end of that period.

(5) An annual report of an authorised fund must also contain a statement setting out a description of the assessment of value required by COLL 8.5.17R including:

(a) a separate discussion and conclusion for the matters covered in each paragraph of COLL 6.6.21R, and for each other matter that
formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;

(b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to unitholders;

(c) an explanation for any case in which unitholders hold units in a class for which the payments out of scheme property in relation to that class as set out in the prospectus (in this rule, “charges”) are higher than those applying to other classes of the same scheme with substantially similar rights;

(d) the conclusion of the authorised fund manager’s assessment of whether the charges are justified in the context of the overall value delivered to the unitholders in the scheme; and

(e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the unitholders, a clear explanation of what action has been or will be taken to address the situation.

(6) An AFM need not include the information required by (5) in its annual report if it makes the information available to unitholders annually in a composite report covering two or more of the schemes it manages, published in the same manner as the annual report.

Information to be included in annual reports on securities financing transactions and total return swaps

(1) The Securities Financing Transactions Regulation sets out the additional information which an authorised fund manager who is a full-scope UK AIFM of a qualified investor scheme must include in the scheme’s annual report.

(2) COLL 4.5.8ABEU and COLL 4.5.8ACEU copy out the relevant provisions of that regulation.

(3) An authorised fund manager of a qualified investor scheme that has not used securities financing transactions or total return swaps during the relevant annual accounting period is not required to include the information in COLL 4.5.8ACEU in its reports.

Contents of the half-yearly report

(1) A half-yearly report on an authorised fund or sub-fund must contain:

(a) the accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 8.3.5C R; and

(c) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to where the report’s location on the firm’s website, in accordance with ESG 2.3.1R, where the half-yearly report most closely follows the reporting deadline of 30 June, under ESG 2.1.1R(1).

(2) For a scheme which is an umbrella, the authorised fund manager may choose whether the half-yearly report is prepared for the umbrella as a whole, or for each individual sub-fund, or both.
**Authorised fund manager’s report**

8.3.5C  
**The report of the authorised fund manager must include:**

1. a review of the investment activities during the period to which the report relates;

1A. a portfolio statement prepared in accordance with the requirements of the IMA SORP;

1B. in the case of an umbrella which has more than one sub-fund, particulars in the form of a table showing, as at the end of the period to which the report relates:
   - for each sub-fund, the number of units in that sub-fund that were held by a second sub-fund of that umbrella; and
   - the value of each such holding;
   or, alternatively, a statement that there were no such holdings as at the end of that period;

2. particulars of any fundamental or significant change to the authorised fund made since the date of the last report; and

3. any other information which would enable unitholders to make an informed judgement on the development of the activities of the authorised fund during the period and the results of those activities as at the end of the period.

**Report of the depositary**

8.3.5D  
(1) The depositary must make an annual report to unitholders which must be included in the annual report.

(2) The depositary’s report must contain:

   - a description, which may be in summary form, of the duties of the depositary under COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the scheme property; and

   - a statement whether in any material respect:
     - (i) the issue, sale, redemption and cancellation and calculation of the price of the units and the application of the authorised fund’s revenue, have not been carried out in accordance with the rules in this sourcebook and, where applicable, the OEIC Regulations and the instrument constituting the fund; and
     - (ii) the investment and borrowing powers and restrictions applicable to the authorised fund have been exceeded.

**Signing of annual and half-yearly reports**

8.3.5E  
The annual reports in COLL 8.3.5AR (1) and (2) and the half-yearly reports in COLL 8.3.5BR (1) must:

1. in the case of an ICVC, if there is:
(a) more than one director, be approved by the board of directors and signed on their behalf by the ACD and at least one other director; or

(b) no director other than the ACD, be signed by the ACD;

(2) in the case of an AUT or ACS, if the authorised fund manager has:

(a) more than one director, be signed by at least two directors of the authorised fund manager; or

(b) only one director, be signed by the director of the authorised fund manager.

### Alterations to the scheme and notices to Unitholders

#### 8.3.6

(1) Any proposed change which would be reasonably considered to be a fundamental change to the scheme requires the prior sanction of an ordinary resolution of the unitholders.

(2) Any proposed change to the scheme which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to Unitholders to become effective.

(3) Alterations affecting only a particular sub-fund or class of units may be approved in accordance with (1) or (2) for the particular sub-fund or class of units, with the consent of, or, as the case may be, notice to, the relevant unitholders.

(4) This rule and COLL 8.3.8 R (Meetings) will apply (unless the context requires otherwise) to alterations concerning unitholders of a particular sub-fund or class of units rather than the scheme or sub-fund as a whole.

### Alterations to the scheme and notices to Unitholders: guidance

#### 8.3.7

Although account should be taken of the guidance on fundamental changes (COLL 4.3.5 G (Guidance on fundamental changes)) and significant changes (COLL 4.3.7 G (Guidance on significant changes)) the impact of any change to the scheme should be assessed individually based on the nature of the scheme and its investor profile.

### Meetings

#### 8.3.8

(1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the instrument constituting the fund and be reasonable and fair as between all relevant parties.

(2) The authorised fund manager must record and keep minutes for six years of all proceedings to which COLL 8.3.6 R (Alterations to the scheme and notices to Unitholders) and this rule are relevant.

(3) The provisions in COLL 4.4.12 R (Notices to Unitholders), COLL 4.4.13 R (Other notices) and COLL 4.4.14 G (References to writing and electronic documents) apply in relation to qualified investor schemes.
8.4 Investment and borrowing powers

Application

8.4.1 R

(1) Subject to (1A), this section applies to an ICVC which is a qualified investor scheme and an authorised fund manager and a depositary of a qualified investor scheme.

(1A) Other than COLL 8.4.2R, COLL 8.4.4CG, COLL 8.4.7R, COLL 8.4.8R and COLL 8.4.9AG this section does not apply where the qualified investor scheme in question is a regulated money market fund.

8.4.1A R

(1) Where this section refers to a second scheme, and the second scheme is a feeder scheme, which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which the feeder scheme's master scheme invests.

(2) Where this section refers to a second scheme, and the second scheme is a master scheme to which (in respect of investment in units in collective investment schemes) the relevant qualified investor scheme is dedicated, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which that master scheme invests.

Spread of risk

8.4.2 R

An authorised fund manager must take reasonable steps to ensure that the scheme property of a qualified investor scheme provides a spread of risk, taking into account the investment objectives and policy of the scheme as stated in the most recently published prospectus, and in particular, any investment objective as regards return to the unitholders (whether through capital appreciation or income or both).

Investment powers: general

8.4.3 R

(1) The scheme property of a qualified investor scheme may, subject to the rules in this chapter, comprise any assets or investments to which it is dedicated.

(2) The instrument constituting the fund and the prospectus may further restrict:
(a) the kinds of assets in which the scheme property may be invested;
(b) the types of transactions permitted and any relevant limits; and  
(c) the borrowing powers of the scheme.

Qualified investor schemes: general

The scheme property of a qualified investor scheme must, except where otherwise provided by the rules in this chapter, consist only of one or more of the following to which it is dedicated:

1. any specified investment:
   (a) within articles 74 to 86 of the Regulated Activities Order; and  
   (b) within article 89 (Rights to or interests in investments) of the Regulated Activities Order where the right or interest relates to a specified investment within (a);

2. an interest in an immovable under COLL 8.4.11 R (Investment in property);

3. precious metals; or  

4. a commodity contract traded on an RIE or a recognised overseas investment exchange.

Money market funds

Investment powers and limits for qualified investor schemes that are regulated money market funds are set out in the Money Market Funds Regulation. Subject to complying with that Regulation, the instrument constituting the fund may further restrict:

1. the kinds of assets in which the scheme property may be invested;  
2. the types of transactions permitted and any relevant limits; and  
3. the borrowing powers of the scheme.

Investment in collective investment schemes

1. A qualified investor scheme may invest in units in a scheme (a ‘second scheme’) only if the second scheme is:  
   (a) a regulated collective investment scheme; or  
   (b) a scheme not within (a) where the authorised fund manager has taken reasonable care to determine that:  
      (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;
(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function;

(iii) (unless it is a master scheme to whose units the relevant qualified investor scheme is dedicated) it is prohibited from investing more than 15% of its value in units of schemes or, if there is no such prohibition, the qualified investor scheme’s authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made; and

(iv) it operates in accordance with the principle of risk spreading as described in COLL 8.4.2 R.

(2) A qualified investor scheme must not invest more than 20% in value of the scheme property in units in second schemes which are unregulated schemes or qualified investor schemes unless the authorised fund manager has carried out appropriate due diligence on each of the second schemes and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second scheme complies with relevant legal and regulatory requirements.

(3) The authorised fund manager of a qualified investor scheme with more than 20% in value of the scheme property invested in one or more second schemes which are unregulated schemes or qualified investor schemes must carry out appropriate due diligence on those schemes on an ongoing basis.

Investment in a collective investment scheme that is an umbrella

Where the second scheme in COLL 8.4.5 R is an umbrella, the provisions apply to each sub-fund as if it were a separate scheme.

1. The guidance at COLL 5.7.11 G applies to an authorised fund manager of a qualified investor scheme carrying out due diligence for the purpose of COLL 8.4.5 R, as if that guidance related to COLL 8.4.5 R.

2. Where COLL 5.7.11G (10) refers to COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to COLL 8.5.9 R (Valuation, pricing and dealing).

3. In addition to the guidance at COLL 5.7.11 G the authorised fund manager should, as part of its due diligence process, consider whether the property of each of the second schemes is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second scheme and, if not, what controls over the property of the second scheme are in place to protect investors.
Delivery of property under a transaction in derivatives or a commodities contract

8.4.6  R

(1) An authorised fund manager must take reasonable care to determine the following when entering into any transaction in derivatives or any commodity contract which may result in any asset becoming part of the scheme property:

(a) if it is an asset in which the scheme property could be invested, that the transaction:

(i) can be readily closed out; or

(ii) would at the expected time of delivery relate to an asset which could be included in the scheme property under the rules in this chapter; or

(b) in any other case that the transaction can be readily closed out.

(2) An authorised fund manager may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the unitholders, provided it has the consent of the depositary.

(3) Any asset within (1) acquired in accordance with (2) may form part of the scheme property despite any other rule in this chapter until the position can be rectified.

Cover for transactions in derivatives and forward transactions

8.4.7  R

(1) A transaction in derivatives or a forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2).

(2) Exposure is globally covered if adequate cover from within the scheme property is available to meet the scheme's total exposure taking into account any reasonably foreseeable market movement.

(3) The total exposure relating to derivatives held in a qualified investor scheme may not exceed the net value of the scheme property.

(4) No element of cover may be used more than once.

Valuation of an OTC derivative

8.4.7A  R

A transaction in an OTC derivative must be capable of valuation which it will only be if the authorised fund manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy:

(1) on the basis of the pricing model; or

(2) on some other reliable basis reflecting an up-to-date market value;

which has been agreed between the authorised fund manager and the depositary.
Continuing nature of limits and requirements

8.4.8  
(1) An authorised fund manager must, as frequently as necessary to ensure compliance with ■ COLL 8.4.7 R (2) and ■ COLL 8.4.7 R (4), re-calculate the amount of cover required in respect of derivatives and forwards positions in existence under this chapter.

(2) Derivatives and forwards positions may be retained in the scheme property only so long as they remain covered globally under ■ COLL 8.4.7 R.

(3) An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme’s derivatives positions and their contribution to the overall risk profile of the scheme.

Permitted stock lending

8.4.9  
(1) The ICVC, or the depositary at the request of the ICVC, or the depositary of an AUT or ACS at the request of the authorised fund manager, may enter into a repo contract or a stock lending arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).

(2) The depositary must ensure that the value of any collateral, for the stock lending arrangement is at all times at least equal to the value of the securities transferred by the depositary.

(3) In the case of the expiry of validity of any collateral, the duty in (2) is satisfied if the depositary or the authorised fund manager, as appropriate, takes reasonable care to determine that sufficient collateral will be transferred by close of business on the day of expiry.

The Money Market Funds Regulation sets out restrictions in relation to stock lending and repo contracts that apply in respect of regulated money market funds.

General power to borrow

8.4.10  
(1) The ICVC or depositary of an AUT or ACS (on the instructions of the authorised fund manager) may borrow money for the use of the authorised fund on terms that the borrowing is to be repayable out of the scheme property.

(2) The authorised fund manager must ensure that the authorised fund’s borrowing does not, on any day, exceed 100 % of the net value of the scheme property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.

(3) In this rule “borrowing” also includes any arrangement (including a combination of derivatives) designed to achieve a temporary injection of money into the scheme property in the expectation that the sum will be repaid.
(4) Where the limit in (2) is breached, the authorised fund manager must take action in accordance with the principles set out in
■ COLL 8.5.3 R (3) to ■ COLL 8.5.3 R (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

### Investment in property

8.4.11 R

(1) Any investment in land or a building held within the scheme property of a qualified investor scheme must be in an immovable within (2).

(2) For an immovable:

(a) it must be situated in a country or territory identified in the prospectus;

(b) the authorised fund manager must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and

(c) the authorised fund manager of an AUT or ACS or the ICVC must have received a report from the appropriate valuer that:
   (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
   (ii) states that in the appropriate valuer's opinion the interest in the immovable would if acquired by the scheme, be capable of being disposed of reasonably expeditiously at that valuation;

(d) unless (c) is satisfied, the authorised fund manager of an AUT or ACS or the ICVC must have received a report from an appropriate valuer valuing the interest in the immovable and stating that:
   (i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property; and
   (ii) in the opinion of the appropriate valuer, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and

(e) it must not be bought:
   (i) if it becomes apparent to the authorised fund manager that the report in either (c) or (d) could no longer reasonably be relied upon; or
   (ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).

(3) Any contents of any building may be regarded as part of the relevant immovable.

(4) An appropriate valuer must be a person who:

(a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;

(b) is qualified to be a standing independent valuer of an authorised fund or is considered by the scheme's standing independent valuer to hold an equivalent qualification;
(c) is independent of the ICVC, the depositary and each of the directors of the ICVC or of the authorised fund manager and depositary of the AUT or ACS; and

(d) has not engaged himself or any of his associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

**Investment in overseas property through an intermediate holding vehicle**

(1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

(1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle's reasonable running costs (including tax).

(2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme’s investment objectives and policy.

(3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.

(4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.

(5) The authorised fund manager should provide sufficient information to enable the depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.
Investment limits for immovables

8.4.12 R

The following limits apply in respect of immovables held as part of the scheme property:

1. The amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an appropriate valuer under COLL 8.4.11 R (2)(c) or COLL 8.4.11 R (2)(d) or COLL 8.4.13 R, as appropriate;

2. No option may be granted to a person to buy or obtain an interest in any immovable comprised in the scheme property if this might unduly prejudice the ability to provide redemption; and

3. The total of all premiums paid for options to purchase immovables must not exceed 10% of the scheme value in any 12 month period, calculated at the date of the granting of the option.

Standing independent valuer and valuation

8.4.13 R

1. In relation to the appointment of a valuer the authorised fund manager must:

   a. at the outset appoint the standing independent valuer with the approval of the depositary and likewise upon any vacancy; and

   b. ensure that any immovables in the scheme property are valued by an appropriate valuer (standing independent valuer) appointed by the authorised fund manager.

2. The following apply in relation to the functions of the standing independent valuer:

   a. The authorised fund manager must ensure that the standing independent valuer appointed under (1), procures the valuation of all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;

   b. For the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;

   c. The authorised fund manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;

   d. If either the authorised fund manager or the depositary becomes aware of any matter which appears likely to:

      i. affect the outcome of a valuation of an immovable; or

      ii. cause the valuer to decide to value under (a), instead of under (c),

      it must immediately inform the standing independent valuer of that matter;

   e. The authorised fund manager must use its best endeavours to ensure that any other affected person reports to the standing independent valuer immediately upon that person becoming aware of any matter within (d); and
(f) any valuation by the standing independent valuer must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA 2 of the RICS Valuation – Global Standards 2017 UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to any provisions of the instrument constituting the fund.

(3) In relation to immovables:

(a) any valuation under this rule has effect, until the next valuation under this rule, for the purposes of the value of immovables; and

(b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it reasonably appears to the authorised fund manager to be legally enforceable.

In considering whether a valuation of overseas immovables by the standing independent valuer is made on an appropriate basis for the purpose of COLL 8.4.13R (2)(f), the authorised fund manager should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.
## 8.5 Powers and responsibilities

### Application

8.5.1 (1) Subject to (2) and (3), this section applies to an ICVC which is a qualified investor scheme and the authorised fund manager, any other directors of an ICVC and the depositary of a qualified investor scheme.

(2) COLL 8.5.9R(1) to (8) and (10) do not apply where the qualified investor scheme is a regulated money market fund.

(3) Where a qualified investor scheme is a regulated money market fund, COLL 8.5.2R and COLL 8.5.3R apply to the authorised fund manager and depositary of that scheme to the extent the provisions are consistent with the requirements of the Money Market Funds Regulation.

### Functions of the authorised fund manager

8.5.2 (1) The authorised fund manager must manage the scheme in accordance with:

   - (a) the instrument constituting the fund;
   - (b) the applicable rules;
   - (c) the most recently published prospectus;
   - (d) for an ICVC, the OEIC Regulations; and
   - (e) where applicable, the Money Market Funds Regulation.

(2) The authorised fund manager must carry out such functions as are necessary to ensure compliance with the rules that impose obligations on the authorised fund manager or ICVC, as appropriate.

(3) The authorised fund manager must:

   - (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
   - (b) instruct the depositary how rights attaching to the ownership of scheme property are to be exercised;
   - (c) take action immediately to rectify any breach of the pricing methodology set out in the prospectus, which must (unless the authorised fund manager determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
(i) by the authorised fund manager to unitholders and former unitholders;
(ii) by the ACD to the ICVC;
(iii) by the ICVC to the ACD;
(iv) by the authorised fund manager of the AUT or ACS to the depositary; or
(v) by the depositary; (for the account of the AUT or ACS) to the authorised fund manager;

(d) ensure where relevant that the ICVC complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the OEIC Regulations;
(e) maintain such records as are necessary to enable the authorised fund manager or the ICVC, as appropriate, to comply with and demonstrate compliance with the rules in this sourcebook and also in the case of an ICVC, the OEIC Regulations; and
(f) maintain for a period of six years a daily record of the units held, acquired or disposed of by the authorised fund manager including the classes of such units, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

8.5.3 R

(1) An authorised fund manager may give instructions to deal in the scheme property.

(2) An authorised fund manager must avoid the scheme property being used or invested contrary to any provision in COLL 8.4 (Investment and borrowing powers).

(3) An authorised fund manager must immediately on becoming aware of any breach of COLL 8.4 take action, at its own expense, to rectify that breach.

(4) An authorised fund manager must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

(5) An authorised fund manager must not postpone taking action in accordance with (3) unless the depositary has given its consent.

Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

8.5.3A R

Where reasonable grounds exist for an ACD of an ICVC, or an authorised contractual scheme manager of a co-ownership scheme which is an umbrella, to consider that a foreign law contract entered into by the ICVC or authorised contractual scheme manager on behalf of the co-ownership scheme may have become inconsistent with the principle of limited recourse stated in the instrument constituting the fund of the ICVC or co-ownership scheme (see COLL 8.2.6 R(2)(4A) and COLL 8.2.6 R(2)(4B)), the ACD or authorised contractual scheme manager of the co-ownership scheme must:
(1) promptly investigate whether there is an inconsistency; and

(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

In deciding what steps are appropriate to remedy the inconsistency, the ACD or authorised contractual scheme manager of the co-ownership scheme should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

(1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or

(2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

Duties of the depositary

(1) The depositary is responsible for the safekeeping of all the scheme property.

(2) The depositary must:

(a) take all steps to ensure that transactions properly entered into for the account of the scheme are completed;

(b) take all steps to ensure that instructions properly given by the authorised fund manager in respect of the exercise of rights related to scheme property are carried out;

(c) ensure that any scheme property in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;

(d) take into its custody or control all documents of title of the scheme property other than in respect of derivatives or forward transactions;

(e) ensure that any resulting benefit of a derivatives or forward transaction is received by itself in respect of the scheme;

(f) hold and deal with any income received in respect of the scheme property in accordance with COLL 8.5.15 R (Income);

(g) take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with:

   (i) COLL 8.4 (Investment and borrowing powers);

   (ii) COLL 8.5.9 R (Valuation, pricing and dealing);

   (iii) COLL 8.5.15 R (Income); and

   (iv) where applicable, the provisions of the Money Market Funds Regulation relating to investment and borrowing powers, valuation, pricing, and dealing, and income.

(h) keep records so as to comply with the rules in this sourcebook and so as to demonstrate such compliance; and

(i) be responsible for any other duties as set out in the instrument constituting the fund.
(3) If a relevant ICVC ceases to have any directors, the depositary may act in accordance with COLL 6.5.6 R(ICVC without a director).

(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.]

### Delegation

8.5.5

(1) A small authorised UK AIFM (or in addition any other director in the case of an ICVC managed by a small authorised UK AIFM) may delegate any function to any person.

(2) (a) The depositary of a scheme managed by a small authorised UK AIFM has the power to delegate any function to anyone, including in the case of an ICVC a director, to assist the depositary to perform its functions.

(b) However, it must not retain the services of the authorised fund manager or, in the case of an ICVC, any other director to perform any part of its functions of safe custody of the scheme property.

(3) Subject to any provisions of the OEIC Regulations, the delegator in (1) and (2) will not be responsible under the rules in COLL for any act or omission of the delegate provided that the delegator can show:

(a) that it was reasonable for the delegator to obtain assistance to perform the function in question;

(b) that the delegate was and remained competent to provide that assistance; and

(c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

### Delegation and responsibility for regulatory obligations

8.5.6

Directors of an ICVC, authorised fund managers and depositaries should also have regard to SYSC 8 (Outsourcing). SYSC 8.1.6 R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.

### Conflicts of interest

8.5.7

(1) The authorised fund manager and the depositary must ensure that any transaction in respect of the scheme property undertaken with an affected person is on terms at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm’s length with an independent third party.
(2) Paragraph (1) is subject to any provision in the instrument constituting the fund and the prospectus imposing a prohibition in relation to any type of transaction.

The register of Unitholders: AUTs or ACSs

(1) The authorised fund manager or the depositary of an AUT or ACS (in accordance with their responsibilities as set out in the instrument constituting the fund) must maintain a register of unitholders as a document in accordance with this rule.

(2) The register must contain:

   (a) the name and address of each Unitholder (for joint Unitholders no more than four need to be registered);

   (b) the number of units (including fractions of a unit) of each class held by each unitholder; and

   (c) the date on which the Unitholder was registered in the register for the units standing in his name.

(3) The authorised fund manager or the depositary of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the register is kept complete and up to date.

(4) Where relevant, the authorised fund manager must immediately notify the depositary of an AUT or ACS of any information he receives which may affect the accuracy of any entry in the register.

(5) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager is not entered in the register as the new unitholder.

Valuation, pricing and dealing

(1) The value of the scheme property is the net value of the scheme property after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).

(2) Any part of the scheme property which is not an investment (save an immovable) must be valued at fair value.

(3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.

(4) The value of the scheme property of an authorised fund must, save as otherwise provided in this section, be determined in accordance with the provisions of the instrument constituting the fund and the prospectus, as appropriate.

(4A) [deleted]

(4B) [deleted]

(5) The scheme must have a valuation point on each dealing day.
(5A) [deleted]

(6) The **authorised fund manager** must prepare a valuation in accordance with (4) for each relevant type of **unit** at each relevant **valuation point**.

(7) The price of a **unit** must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between **unitholders**.

(8) [deleted]

(9) The **authorised fund manager** must publish in an appropriate manner the **price** of any type of **unit** based on the valuation carried out in accordance with (6).

(10) The **authorised fund manager** must also provide on request to any **unitholder** at any time an estimated price for any type of **unit** in the scheme.

(11) The period of any **initial offer** and how it should end must be set out in the **prospectus** and must not be of unreasonable length.

### Profits from dealing as principal

8.5.9-B

(1) Where an **authorised fund manager**: 

- accepts instructions to **sell and redeem units** as **principal**; and
- is able to execute a **sale** instruction by **selling units** it has **redeemed** at the same **valuation point**, without placing its own capital at risk,

subject to (2), the **AFM** must not retain for its own account, or the account of any of its **associates**, the difference between the **price** at which a **unit** was **redeemed** (before deduction of any **redemption charge**) and the **price** at which the same **unit** was sold (after deduction of any **preliminary charge**). Any such difference must be allocated in a way that is fair to **unitholders**.

(2) In calculating the profit arising under (1), the **AFM** may offset any loss it incurs at the same **valuation point**, calculated in accordance with (3), when dealing as **principal** in relation to:

- a **unit issued** at that **valuation point** to fulfil a **sale** instruction that cannot be matched against any **redeemed unit** or any other **unit** of that **class** held by the **manager** as **principal**; and
- a **unit redeemed** and **cancelled** at that **valuation point**.

(3) The amount of the loss referred to in (2) is:

- for **units issued** in accordance with (2)(a), the difference between the **issue price** of a **unit** and the **sale price** of that **unit**, less any **preliminary charge**;

- for **units cancelled** in accordance with (2)(b), the difference between the **cancellation price** of a **unit** and the **redemption price** of that **unit**, before any **redemption charge** is applied.
(4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent valuation point.

(5) This rule applies to the redemption and sale of units of different classes at the same valuation point, if those classes are treated as one for the purpose of COLL 8.5.10AR.

8.5.9-A

(1) The authorised fund manager may commit its own capital to hold units for dealing as principal and may seek to profit from gains in the value of the units it holds, when it issues or redeems units at one valuation point then sells or cancels them at a later valuation point. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the units fall in value, or from the ability to match simultaneous sales and redemptions at different prices at no risk to its own capital.

(2) The AFM may allocate any amount arising under COLL 8.5.9-BR(1) in the interests of investors by paying it into scheme property for the benefit of all unitholders. Alternatively, the AFM may redistribute it individually among the transacting investors.

(3) Where the AFM intends to allocate a payment to scheme property, it should determine if the amount (when added to any other amounts of the same kind relating to that class of units) would, if taken into account in the scheme’s valuation, affect the accuracy of the unit prices to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the scheme until the payment is transferred. Such payments into scheme property should be made regularly and no less frequently than payments for the AFM’s management charge are transferred out of scheme property.

(4) The calculation to be performed under COLL 8.5.9-BR should be carried out in relation to each valuation point of the scheme on a timely basis. Where it is not practical to do this before unit prices are calculated and published, the AFM should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to scheme property.

Issues and cancellations of units

8.5.10

(1) The authorised fund manager must:

(a) ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to unitholders of that class; and

(b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a unitholder or potential unitholder.
(2) For the purposes of (1) the **authorised fund manager** may take into account **sales** and **redemptions** after the **valuation point**, provided it has systems and controls to ensure compliance with (1).

(3) The **authorised fund manager** must arrange for the **issue** and **cancellation of units** and pay money or assets to or from the **depositary** for the account of the **scheme** as required by the **prospectus**, and, where applicable, in accordance with the **Money Market Funds Regulation**.

(4) The **authorised fund manager** must keep a record of **issues** and **cancellations** made under this **rule**.

(5) The **authorised fund manager** may arrange for the **ICVC**, or instruct the **depositary** of the **AUT or ACS** to **issue** or cancel **units** where the **authorised fund manager** would otherwise be obliged to sell or redeem the **units** in the manner set out in the **prospectus**.

(6) Where the **authorised fund manager** has not complied with (1), it must correct the error as soon as possible and must reimburse the **scheme** any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the **prospectus**.

### Issue and cancellation of units in multiple classes

**8.5.10A**

If a **qualified investor scheme** has two or more **classes of unit** in issue, the **authorised fund manager** may treat any or all of those **classes** as one for the purpose of determining the number of **units** to be **issued** or **cancelled** by reference to a particular **valuation point**, if:

1. the **depositary** gives its prior agreement; and
2. the **relevant classes**:
   1. have the same entitlement to participate in, and the same liability for **charges**, expenses and other payments that may be recovered from, the **scheme property**; or
   2. differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the **price** of the **units** in each **class** is calculated by reference to undivided shares in the **scheme property**.

### Transfer of units in an ACS

**8.5.10B**

1. Where transfer of **units** in an **ACS** is allowed by its **contractual scheme deed** and **prospectus** in accordance with the conditions specified by **FCA rules**, the **authorised contractual scheme manager** of the **ACS** must take reasonable care to ensure that **units** are only transferred if the conditions specified by the **FCA** under (2) are met.

2. The **FCA** specifies that for the purposes of (1), and for the purposes of **COLL 8.2.6R(2)(6)(a)(vii)(B)** (Table: contents of the instrument constituting the fund) and **COLL 8.3.4R(5B)(2)** (Table: contents of qualified investor scheme prospectus), **units** in the **ACS** may only be transferred to a **person**:
(a) who is a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme; and
(b) to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R.

The FCA recognises that some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder, or otherwise) and are accordingly outside the control of the authorised contractual scheme manager. The authorised contractual scheme manager is expected to comply with its responsibilities under COLL 8.5.10E R (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those units.

Responsibilities of the authorised contractual scheme manager in relation to ACS units

(1) The authorised contractual scheme manager of an authorised contractual scheme which is a qualified investor scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate Unitholder in a qualified investor scheme, unless:
   (a) that person is a:
      (i) professional ACS investor; or
      (ii) large ACS investor; or
      (iii) person who already holds units in the scheme; and
   (b) units in a qualified investor scheme may be promoted to that person under COBS 4.12.4 R.

(2) The authorised contractual scheme manager will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Redemption of ACS units in a QIS by an authorised contractual scheme manager

The authorised contractual scheme manager of a qualified investor scheme which is an ACS must redeem units in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in COLL 8 Annex 2(1) and (2) (ACS Qualified Investor Schemes: eligible investors).

Sale and redemption

(1) The authorised fund manager must, at all times during the dealing day, be willing to effect the sale of units to any eligible investor (within any conditions in the instrument constituting the fund) and the prospectus which must be fair and reasonable as between all
unitholders and potential unitholders) for whom the authorised fund manager does not have reasonable grounds to refuse such sale.

(2) The authorised fund manager must, at all times during the dealing day, effect a redemption on the request of any eligible unitholder (within any conditions in the instrument constituting the fund and the prospectus) of units owned by that unitholder, unless the authorised fund manager has reasonable grounds to refuse such redemption.

(3) On agreeing to a redemption of units within (2), the authorised fund manager must pay the full proceeds of the redemption to the unitholder within any reasonable period specified in the instrument constituting the fund or the prospectus, unless it has reasonable grounds for withholding payment.

(4) Payment of proceeds on redemption must be made by the authorised fund manager in any manner provided for in the prospectus which must be fair and reasonable as between redeeming unitholders and continuing unitholders.

Limited redemption periods

The maximum period between dealing days for a qualified investor scheme will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the scheme. For instance, for a scheme aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between dealing days for liquidity reasons than for a scheme investing predominantly in listed securities.

Property Authorised Investment Funds

(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.

(2) Where the authorised fund manager of a property authorised investment fund becomes aware that a body corporate holds more than the maximum allowable, he must:

(a) notify the body corporate of that event;

(b) not pay any income distribution to the body corporate; and

(c) redeem or cancel the body corporate’s holding down to the maximum allowable within a reasonable time-frame.
(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the authorised fund manager reasonably considers to be appropriate having regard to the interests of the unitholders as a whole.

8.5.12B Reasonable steps to monitor the maximum allowable include:

(1) regularly reviewing the register; and

(2) taking reasonable steps to ensure that unitholders are kept informed of the requirement that no body corporate may hold more than 10% of the net asset value of a property authorised investment fund.

Payments

8.5.13 (1) An ICVC must not incur any expense in respect of the use of any movable or immovable property unless the scheme is dedicated to such investment or such property is necessary for the direct pursuit of its business.

(2) Payments out of the scheme property may be made from capital property rather than from income, provided the basis for this is set out in the prospectus.

Exemption from liability to account for profits

8.5.14 Except as provided in §COLL 8.5.9-BR, an affected person is not liable to account to another affected person or to the unitholders of the scheme for any profits or benefits it makes or receives that are made or derived from or in connection with:

(1) dealings in the units of a scheme; or

(2) any transaction in scheme property; or

(3) the supply of services to the scheme;

where disclosure of the non-accountability has been made in the prospectus of the scheme.

Income

8.5.15 (1) A qualified investor scheme must have:

   (a) an annual accounting period;

   (b) a half-yearly accounting period; and

   (c) an accounting reference date;

   the details of which must be set out in the prospectus.

(1A) §COLL 6.8.2 R (2) to §COLL 6.8.2 R (7) (Accounting periods) also apply to the half-yearly accounting period and annual accounting period of a qualified investor scheme.
(2) A qualified investor scheme must have an annual income allocation date, which must be within four months of the accounting reference date.

(3) A qualified investor scheme may have an interim income allocation date and interim accounting periods and if it does, the interim income allocation date must be within a reasonable period of the end of the relevant interim accounting period as set out in the prospectus.

(3A) COLL 6.8.3 R (3) (Income allocation and distribution) to COLL 6.8.3A G (Allocation of income to difference classes of unit) also apply to a qualified investor scheme.

(4) [deleted]

(5) [deleted]

(a) [deleted]

(b) [deleted]

(c) [deleted]

Application of assessment of value and independent director rules

8.5.16 R COLL 8.5.17R to COLL 8.5.22R apply to an authorised fund manager (other than one which is managing an authorised fund under a temporary permission) of an AUT, ACS or ICVC.

Assessment of value

8.5.17 R (1) An authorised fund manager must conduct an assessment at least annually for each scheme it manages of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders.

(2) In carrying out the assessment required by (1), the AFM must, separately for each class of units in a scheme, consider at least the matters set out in COLL 6.6.21R (Table: minimum considerations – assessment of value).

8.5.18 G The guidance in COLL 6.6.22G applies to interpreting the requirements of COLL 6.6.21R as applied by COLL 8.5.17R.

8.5.19 E Failure by an AFM to take sufficient steps to address any instance where a scheme’s charges are not justified in the context of the overall value delivered to unitholders may be relied on as tending to establish contravention of COLL 6.6A.2R, COBS 2.1.1R or COBS 2.1.4R as applicable.

Independent directors

8.5.20 R (1) An authorised fund manager must ensure that at least one quarter of the members of its governing body are independent natural persons. If the AFM’s governing body comprises fewer than eight members,
the AFM must instead ensure that at least two of its members are independent natural persons.

(2) The authorised fund manager, in appointing an independent member of its governing body, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member’s judgement.

(3) The authorised fund manager must take reasonable steps to ensure that independent members appointed to its governing body have sufficient expertise and experience to be able to make judgements on whether the AFM is managing each scheme in the best interests of unitholders.

(4) (a) Independent members of an AFM’s governing body must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.

(b) If an independent member is appointed to more than one governing body within an AFM’s group, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a person who served as an independent director of an AFM’s governing body before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an AFM’s governing body until five years have elapsed from the end of the ten year period referred to in (4).

(6) The terms of employment on which independent members are appointed must be such as to secure their independence.

8.5.21 The guidance in COLL 6.6.26G applies to interpreting the requirement for independence in COLL 8.5.20R.

Allocation of responsibility for compliance to an approved person

8.5.22 (1) An AFM must allocate responsibility for ensuring its compliance with COLL 8.5.17R, COLL 8.5.20R, and COBS 2.1.4R to an approved person.

(2) Where the chair of the AFM’s governing body is an approved person, the AFM must allocate the responsibility set out in (1) to that person.
8.6 Termination, suspension, and schemes of arrangement

Application

8.6.1 This section applies to:

1. an authorised fund manager, the directors, and the depositary of a qualified investor scheme; and
2. an ICVC which is a qualified investor scheme.

Termination

8.6.2 For a qualified investor scheme the provisions in COLL 7.3 to COLL 7.5 will apply as appropriate as if COLL 7 applied to qualified investor schemes.

Suspension

8.6.3 (1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, within any parameters which are fair and reasonable in respect of all the unitholders in the scheme and which are set out in the prospectus, temporarily suspend dealings in units of the scheme, a sub-fund or a class.

(2) Any suspension within (1) must only be where the authorised fund manager has determined on reasonable grounds that there is good and sufficient reason in the interests of unitholders or potential unitholders and the authorised fund manager must have regard to the interests of all the unitholders in the scheme in reaching such an opinion.

(3) At the commencement of suspension under (1), the authorised fund manager must immediately inform the FCA of the suspension and the reasons for it.

(3A) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.

(3B) The authorised fund manager and the depositary must ensure that the suspension only continues for as long as it is justified having regard to the interests of the unitholders.
(4) The suspension of dealings in units must cease, as soon as (2) no longer applies.

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (3).

(5) The authorised fund manager must inform the FCA immediately of the resumption of dealings.

8.6.4 [deleted]

Schemes of arrangement

8.6.5 In relation to an ICVC, ACS or an AUT which is a qualified investor scheme, the provisions in COLL 7.6 (Schemes of arrangement) will apply as appropriate to the authorised fund manager, any other directors of the ICVC and the depositary as if COLL 7.6 applied to a qualified investor scheme and did not exclude unitholders becoming unitholders in another qualified investor scheme.
ACS Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3 R and 8.1.4 G.

For the purposes of the rule on qualified investors in a qualified investor scheme which is an ACS (COLL 8.1.3R (3)), the authorised contractual scheme manager must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a person:

1. who is a:
   (a) professional ACS investor; or
   (b) large ACS investor; or
   (c) person who already holds units in the scheme; and

2. to whom units in a qualified investor scheme may be promoted to that person under COBS 4.12.4 R.
Chapter 9

Recognised schemes
9.1 Application and general information

Application

9.1.1 This chapter applies to operators of recognised schemes and to operators of schemes making a notification in respect of them under Chapter V of Part XVII of the Act (Recognised overseas schemes).

Purpose

9.1.2 This chapter enables potential operators of recognised schemes to know what information and documents the FCA wish to receive to enable it to consider whether to recognise the scheme under the Act for marketing in the United Kingdom.

General information

9.1.3 Further information about notifications for recognition is contained in COLLG.
9.3 Section 272 recognised schemes

Information and documents to be supplied for a section 272 application

9.3.1 (1) If the operator of a scheme makes an application under section 272 of the Act (Individually recognised overseas schemes), the application must include the information in paragraph (4).

(2) The documents must be in English or accompanied by a translation in English.

(3) The documents must be certified by the operator to be true copies of the originals.

(4) The operator of the scheme must provide the following information and documents with the application:

(a) the name of the scheme;
(b) the legal form of the scheme;
(c) the name and address of the operator;
(d) the address of the place in the United Kingdom for service on the operator of notices or other documents;
(e) whether the operator intends to market the scheme in the United Kingdom in a manner which will involve it carrying on a regulated activity in the United Kingdom;
(f) the name and address of any person to whom the property subject to the scheme is entrusted for safekeeping;
(g) the address of the place in the United Kingdom where scheme facilities (see COLL 9.4) will be maintained;
(h) details of the arrangements for the marketing of units in the United Kingdom, namely:
   (i) the proposed commencement date;
   (ii) whether the units will be sold by or through any employed sales force, authorised persons, or unsolicited calls;
   (i) a copy of the instrument constituting the fund;
(j) a copy of the prospectus or any similar document giving details of the scheme;
(k) a copy of the latest annual report and any subsequent half-yearly report;
(l) a copy of any other document affecting the rights of participants in the scheme; and

(m) (where applicable) a copy of the key information document (see COLL 9.3.4G).

**Additional information required in the prospectus for an application under section 272**

**9.3.2 R**

An operator of a recognised scheme must ensure the prospectus:

(1) contains a statement that "Complaints about the operation of the scheme may be made to the FCA."; and

(2) states whether or not investors in the scheme would be covered by the compensation scheme, and if so, it must state how they are covered and who they would need to contact for further information.

**Preparation and maintenance of prospectus**

**9.3.3 R**

(1) An operator of a recognised scheme must comply with the requirements set out in COLL 4.2 (Pre-sale notifications).

(2) Where a recognised scheme is managed and authorised in Guernsey, Jersey, or the Isle of Man, the prospectus need not comply with the requirements of COLL 4.2.5 R(Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

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

**9.3.4 G**

(1) The PRIIPs Regulation requires the manufacturer of a PRIIP to draw up a key information document in accordance with the PRIIPs Regulation before that PRIIP is made available to retail investors (as defined in the PRIIPs Regulation).

(2) The requirements of the PRIIPs Regulation are directly applicable.

(3) As a result, when a recognised scheme is made available to retail clients in the United Kingdom the operator must draw up a key information document in accordance with the PRIIPs Regulation, unless the operator of such a scheme is otherwise exempt from such a requirement under the PRIIPs Regulation for the time being.

**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, 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.

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 depositary under section 277(5)(b) of the Act; or

(3) a previous certificate being provided under section 277A of the Act.

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.
9.4 Facilities in the United Kingdom

General

9.4.1 (1) The operator of a recognised scheme must maintain facilities in the United Kingdom in order to satisfy the requirements of COLL 9.4.2 R to COLL 9.4.6 R.

(2) In this section, a facility is a place of business that complies with COLL 9.4.6 R (Place of facilities).

Documents

9.4.2 (1) The operator of a recognised scheme must maintain facilities in the United Kingdom for any person, for inspection (free of charge) and for the obtaining (free of charge, in the case of the documents at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

(a) the instrument constituting the fund;
(b) any instrument amending the instrument constituting the fund;
(c) the latest prospectus (which must include the address where the facilities are maintained and details of those facilities);
(d) for a recognised scheme which is an EEA UCITS scheme, the EEA key investor information document; and
(e) the latest annual and half-yearly reports.

(1A) [deleted]

(2) In relation to notices and documents sent by operators and depositaries to and from the United Kingdom, COLL 4.4.12 R (Notice to Unitholders) and COLL 4.4.13 R (Other notices) apply.

Price and redemption

9.4.3 (1) The operator must maintain facilities in the United Kingdom for any person where:

(a) information in English can be obtained about prices of units in the scheme; and

(b) a participant may redeem or arrange for redemption of units in the scheme and obtain payment.

(2) An operator is treated as complying with paragraph (1) if it ensures participants may sell their units on an investment exchange at a price not significantly different from net asset value; and if so, must inform participants of the investment exchange.
9.4.4  [deleted]

Complaints

9.4.5  The operator must maintain facilities in the United Kingdom, at which any person who has a complaint to make about the operation of the scheme can submit his complaint for transmission to the operator.

Place of facilities

9.4.6  (1) The address of the facilities maintained by the operator in accordance with this section and the details of the facilities so maintained must be stated in the prospectus of the scheme.

(2) The address of the facilities referred to in (1) must be the address of the operator's principal place of business in the United Kingdom, or, if there is no such address, such other address in the United Kingdom where the operator can be contacted.

(3) [deleted]
Chapter 10

Fees
Chapter 11

Master-feeder arrangements for UCITS schemes
11.1 Introduction

Application

11.1.1 This chapter applies to:

1. an authorised fund manager of an AUT, ACS or an ICVC;
2. any other director of an ICVC;
3. an ICVC; and
4. a depositary of an AUT, ACS or ICVC;

where such AUT, ACS or ICVC is a UCITS scheme that is a feeder UCITS or a master UCITS in accordance with COLL 11.1.2 R (Table of application).

11.1.1A It may be possible for a UCITS scheme to be the feeder UCITS of a master UCITS that is an EEA UCITS scheme. In such a case, the ability of the operator, AFM, depositary, and auditor of the feeder UCITS to comply with the applicable rules may depend upon whether appropriate agreements can be reached with the management company, depositary and auditor of the master UCITS. It is not possible for an EEA UCITS scheme to be a feeder of a master UCITS scheme.

Table of application

11.1.2 This table belongs to COLL 11.1.1 R

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<tr>
<th>Reference</th>
<th>ICVC</th>
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<th>Depositary of an ICVC, AUT or ACS</th>
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Purpose

(1) This chapter sets out:

(a) the notification requirements for a UCITS scheme to be approved as a feeder UCITS under section 283A (Master-feeder structures) of the Act; and

(b) the requirements which apply to a feeder UCITS where its master UCITS is wound up, merges with another UCITS or is divided into one or more UCITS.

Note 1: "x" means "applies", but not every paragraph in every provision referred to will necessarily apply.

Note 2: COLL 11.5 (with the exception of COLL 11.5.6 R) applies to auditors.
(2) This chapter also ensures there is a flow of information and documents between a feeder UCITS and its master UCITS. In particular, it allows the authorised fund manager, depositary and auditor of a feeder UCITS to obtain all information and documents necessary to perform their functions.

(3) COLL 11.5 (Auditors) also imposes requirements on auditors of a master UCITS and a feeder UCITS.

(4) In this section references to:

(a) a UCITS scheme, a feeder UCITS, a master UCITS, or EEA UCITS scheme include the sub-fund of any such scheme and references to winding up a scheme are to be read as also applying to the termination of a sub-fund; and

(b) the management company of an EEA UCITS scheme are to the operator of the scheme.
11.2 Approval of a feeder UCITS

Explanation

11.2.1 (1) Section 283A(1) (Master-feeder structures) of the Act provides that the operator of a UCITS scheme may not invest a higher proportion of scheme property in units of another UCITS than is permitted by rules made by the FCA (which implemented article 55 of the UCITS Directive), unless the investment is approved by the FCA in accordance with that section.

(2) The relevant rule which implemented article 55(1) of the UCITS Directive is COLL 5.2.11 R (9), which provides that not more than 20% in value of a scheme is to consist of the units of any one collective investment scheme.

Application for approval of an investment in a master UCITS

11.2.2 (1) An application for approval of an investment in a master UCITS under section 283A of the Act must be accompanied by the following documents:

(a) the instrument constituting the fund of the feeder UCITS and of the master UCITS;

(b) the prospectus and the key investor information referred to in COLL 4.7.2 R (Key investor information) of the feeder UCITS and of the master UCITS;

(c) the master-feeder agreement or the internal conduct of business rules in accordance with COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules);

(d) where applicable, the information to be provided to unitholders in accordance with COLL 4.8.3 R (Information to be provided to Unitholders);

(e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement in accordance with COLL 11.4.1R (2) (Information-sharing agreement between depositaries); and

(f) if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement in accordance with COLL 11.5.1 R (Information-sharing agreement between auditors).

(2) Where the master UCITS is an EEA UCITS scheme, the application for approval must also be accompanied by an attestation from a person acceptable to the FCA that the master UCITS:
(a) is an EEA UCITS scheme or a sub-fund of it; and
(b) fulfils the conditions set out in article 58(3)(b) and (c) of the UCITS Directive.

(3) The documents referred to in (1) and (2) must be provided in English.

[Note: article 59(3) of the UCITS Directive]
11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

11.3.1 The authorised fund manager of a UCITS scheme that is a master UCITS must provide the management company of its feeder UCITS with all documents and information necessary for the latter to meet its regulatory obligations under the provisions of COLL applicable in respect of a UCITS scheme under this chapter.

[Note: article 60(1) first paragraph first sentence of the UCITS Directive]

11.3.1A The authorised fund manager of a UCITS scheme that is a feeder UCITS of a master UCITS which is an EEA UCITS scheme must make a binding arrangement with the management company of the master UCITS to obtain all documents and information necessary to meet its regulatory obligations under the Act.

[Note: article 60(1) first paragraph first sentence of the UCITS Directive]

Master-feeder agreement and internal conduct of business rules

11.3.2 (1) The authorised fund manager of a UCITS scheme that is a feeder UCITS must enter into a master-feeder agreement which, at a minimum, complies with COLL 11 Annex 1 R.

(2) Where a master UCITS and a feeder UCITS are managed by the same management company, the master-feeder agreement may be replaced by internal conduct of business rules which, at a minimum, comply with COLL 11 Annex 2 R.

(3) The authorised fund manager of a feeder UCITS must not invest in units of the master UCITS in excess of the limit applicable under COLL 5.2.11 R (Spread: general) (20%) until the period of 30 calendar days referred to in COLL 4.8.3 R (1) (Information to be provided to Unitholders) has elapsed and the following have become effective:

(a) the master-feeder agreement, or, if applicable under (2), the internal conduct of business rules;
(b) the information-sharing agreement of the depositaries in accordance with COLL 11.4.1R (2) (information-sharing agreement between depositaries); and

(c) the information-sharing agreement of the auditors in accordance with COLL 11.5.1 R (information-sharing agreement between auditors).

(4) An authorised fund manager of a feeder UCITS must make a copy of the master-feeder agreement or, where applicable, the internal conduct of business rules, available to unitholders free of charge on their request.

[Note: article 60(1) first paragraph last sentence, second and third paragraphs, article 61(1) second paragraph, article 62(1) second paragraph and article 64 third paragraph of the UCITS Directive]

11.3.3 Where an authorised fund manager of a feeder UCITS enters into a master-feeder agreement or, if applicable, internal conduct of business rules, with the management company of an EEA UCITS scheme, references in COLL 11 Annex 1 R and COLL 11 Annex 2 R to COLL rules that implemented provisions in the UCITS Directive which are the responsibility of the EEA UCITS scheme’s Home State regulator should be read as referring to the corresponding provisions in the laws and regulations of that EEA State.

11.3.4 In relation to the requirements in COLL 11 Annex 1 R(3) and ANNEX 2R(2), where the dealing arrangements between a master UCITS and a feeder UCITS do not differ from those applying to all non-feeder UCITS unitholders of the master UCITS, the master-feeder agreement or the internal conduct of business rules do not have to replicate those standard dealing arrangements, but may cross-reference to the relevant parts of the prospectus of the master UCITS.

[Note: recital (8) to the UCITS implementing Directive No 2]

Law applicable to the master-feeder agreement

11.3.5 (1) Where the feeder UCITS and the master UCITS are UCITS schemes, the master-feeder agreement must provide that the law of a specified part of the United Kingdom applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the United Kingdom.

(2) Where the master UCITS is established in an EEA State, the master-feeder agreement must provide that the applicable law shall be UK law,

and that both parties agree to the exclusive jurisdiction of the courts of the UK.

[Note: article 14 of the UCITS implementing Directive No 2]

11.3.5A (1) Where paragraph (2) applies a master-feeder agreement that is effective prior to IP completion day need not comply with COLL 11.3.5R(2).
(2) This paragraph applies where the applicable law of the master-feeder agreement was:

(a) UK law before IP completion day, and remains so; or

(b) the law of the EEA State in which the master UCITS was established before IP completion day, and remains so.

**Avoidance of opportunities for market timing**

11.3.6  
(1) The authorised fund managers of a master UCITS and its feeder UCITS must take appropriate measures to co-ordinate the timing of their net asset value calculation and publication, including the publication of dealing prices, in order to avoid market timing in their units, preventing arbitrage opportunities.

(2) Where the master UCITS is an EEA UCITS scheme managed by an EEA UCITS management company, the authorised fund manager must co-ordinate with that management company.

[Note: article 60(2) of the UCITS Directive]

**Obligations of the feeder UCITS**

11.3.7  
(1) An authorised fund manager of a feeder UCITS must monitor effectively the activity of the master UCITS.

(2) In performing this obligation, the authorised fund manager of the feeder UCITS may rely on information and documents received from the master UCITS, or where applicable, the master UCITS’ management company, depositary or auditor, unless there is a reason for doubting their accuracy.

[Note: article 65(1) of the UCITS Directive]

**Inducements**

11.3.8  
Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by:

(1) a feeder UCITS; or

(2) an authorised fund manager of a feeder UCITS; or

(3) any person acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the scheme property of the feeder UCITS.

[Note: article 65(2) of the UCITS Directive]

**Obligations of the master UCITS**

11.3.9  
The authorised fund manager of a master UCITS must immediately inform the FCA of the identity of each feeder UCITS which invests in its units.

[Note: article 66(1) first sentence of the UCITS Directive]
11.3.10 ▶ [deleted]

11.3.11 ▶

(1) An authorised fund manager of a master UCITS must not impose any preliminary charge or redemption charge on the feeder UCITS for the issue, sale, redemption or cancellation of units in the master UCITS.

(2) Where the authorised fund manager of a master UCITS requires any addition to or deduction from the consideration paid on the acquisition or disposal of units by a feeder UCITS which is, or is like, a dilution levy made in accordance with COLL 6.3.8 R (Dilution), it is to be treated as part of the price of the units and not as part of any charge.

[Note: article 66(2) of the UCITS Directive]

11.3.12 ▶ An authorised fund manager of a master UCITS must ensure the timely availability of all information that is required in accordance with its obligations under the regulatory system, the general law and the instrument constituting the fund, to:

  (1) the feeder UCITS (or where applicable its management company);

  (2) the FCA;

  (3) the depositary of the feeder UCITS; and

  (4) the auditor of the feeder UCITS.

[Note: article 66(3) of the UCITS Directive]

Obligations to Unitholders of a master UCITS

11.3.13 ▶ The authorised fund manager of a UCITS scheme that operates, or intends to operate, as a master UCITS must:

  (1) not enter into a master-feeder agreement or, where applicable, internal conduct of business rules in accordance with COLL 11.3.2 R (2) unless it is satisfied on reasonable grounds that the arrangements with the feeder UCITS will not unfairly prejudice the interests of any other unitholder or class of unitholders in the master UCITS;

  (2) consider, in relation to:

    (a) each item of information it makes available to the feeder UCITS or its management company; and

    (b) each matter notified by the depositary of the master UCITS in accordance with COLL 11.4.3 R (Notification of irregularities);

whether it would unfairly prejudice the interests of those unitholders in the master UCITS other than the feeder UCITS by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and
(3) in relation to any matter within (2)(b) where it does not notify other unitholders at the same time:

(a) record the grounds for determining that the interests of those unitholders are not unfairly prejudiced by its decision; and

(b) inform all unitholders of that matter in an appropriate manner and timescale.

(1) The appropriate manner and timescale of notification referred to in COLL 11.3.13R (2) and (3)(b) will depend on the nature and significance of the matter. Consequently, the authorised fund manager will need to assess each matter individually.

(2) An appropriate manner of notification could include sending an immediate notification to the unitholders, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.

(3) Where COLL 11.3.13R (3)(b) applies, it might be appropriate to include the information in the next long report of the scheme.
11.4 Depositaries

Information-sharing agreement between depositaries

11.4.1

(1) An authorised fund manager of a feeder UCITS is responsible for communicating to the depositary of the scheme any information about the master UCITS which is required for the completion of the depositary’s regulatory obligations.

(2) Where a master UCITS and its feeder UCITS have different depositaries, the depositaries must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[Note: article 61(1) first and fourth paragraphs of the UCITS Directive]

Contents of the information-sharing agreement between depositaries

11.4.2

(1) The information-sharing agreement referred to in COLL 11.4.1R (2) must include:

(a) identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether that information or those documents are provided by one depositary to the other or made available on request;

(b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

(c) the co-ordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

(i) the procedure for calculating the net asset value of each scheme, including any measures appropriate to protect against the activities of market timing in accordance with COLL 11.3.6 R (Avoidance of opportunities for market timing);

(ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of those transactions, including any arrangement to transfer assets in kind;

(d) the co-ordination of accounting year-end procedures;
(e) what details the depositary of the master UCITS must provide to the depositary of the feeder UCITS of breaches by the master UCITS of the law and the instrument constituting the fund and how and when those details will be provided;

(f) the procedure for handling ad hoc requests for assistance from one depositary to the other; and

(g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and how and when this will be done.

(2) Where a master-feeder agreement exists in accordance with COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that UK law applies to that agreement, and both depositaries agree to the exclusive jurisdiction of the UK courts in relation to that agreement.

(3) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that UK law applies to that agreement, and both depositaries agree to the exclusive jurisdiction of the UK courts in relation to that agreement.

[Note: articles 24 and 25 of the UCITS implementing Directive No 2]

11.4.2A R

(1) Where paragraph (2) applies, an information-sharing agreement between the depositaries that is effective prior to IP completion day need not comply with COLL 11.4.2R.

(2) This paragraph applies where the applicable law of the information sharing agreement between the depositaries was:

(a) UK law before IP completion day, and remains so; or

(b) the law of a given EEA State before IP completion day, and remains so.

Notification of irregularities

11.4.3 R

(1) Where a depositary of a master UCITS detects any irregularities with regards to the scheme which may have a negative impact on the relevant feeder UCITS, the depositary must immediately inform:

(a) the FCA;

(b) the feeder UCITS or, where applicable, its management company; and

(c) the depositary of the feeder UCITS.

(2) The irregularities referred to in (1) include, but are not limited to:

(a) errors in the valuation of the scheme property performed in accordance with COLL 6.3.3 R (Valuation);
(b) errors in transactions for or settlement of the sale, issue, repurchase or redemption of units in the scheme undertaken by the feeder UCITS;

(c) errors in the payment or capitalisation of income arising from the scheme property, or in the calculation of any related withholding tax;

(d) breaches of the investment objectives, policy or strategy of the scheme as described in the instrument constituting the fund, the prospectus or the key investor information; and

(e) breaches of investment and borrowing limits set out in COLL, the instrument constituting the fund, the prospectus or the key investor information.

[Note: article 61(2) of the UCITS Directive and article 26 of the UCITS implementing Directive No 2]

11.4.4  (1) When notifying the FCA of any irregularities in accordance with COLL 11.4.3R (1), the depositary of the master UCITS should also inform the depositary of the feeder UCITS how the master UCITS or its authorised fund manager has resolved or proposes to resolve the irregularity.

(2) Where the depositary of a UCITS scheme that is a feeder UCITS is informed by the depositary of a master UCITS of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the unitholders of the scheme, it should promptly report its view to the authorised fund manager of the scheme, or in the case of an ICVC, the directors.

[Note: recital (16) to the UCITS implementing Directive No 2]

Disclosure by a trustee or depositary

Section 351A (Disclosure under the UCITS directive) of the Act provides that where a trustee of an AUT or the depositary of an ACS which is a master UCITS or a feeder UCITS, or any person acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the UCITS Directive, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The OEIC Regulations (see regulation 83A) contain corresponding provisions for the depositaries of ICVCs that are feeder UCITS and master UCITS.
11.5 Auditors

Information-sharing agreement between auditors

11.5.1 Where a master UCITS and a feeder UCITS have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with COLL 11.5.3 R and COLL 11.5.4 R (Preparation of the audit report).

[Note: article 62(1) first paragraph of the UCITS Directive]

Contents of the information-sharing agreement between auditors

11.5.2 (1) The information-sharing agreement referred to in COLL 11.5.1 R must include:

(a) identification of the documents and categories of information which are to be routinely shared between both auditors;

(b) whether the information or documents referred to in (a) are to be provided by one auditor to the other or made available on request;

(c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;

(d) the co-ordination of the involvement of each auditor in the accounting year-end procedures for their respective scheme;

(e) identification of matters that must be treated as irregularities and disclosed in the audit report for the master UCITS for the purposes of COLL 11.5.3R (2);

(f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the master UCITS; and

(g) provisions regarding the preparation of the audit reports referred to in COLL 11.5.3 R and COLL 4.5.12 R (Report of the auditor) and the manner and timing for the provision of the audit report for the master UCITS (and drafts of it) to the auditor of the feeder UCITS.

(2) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the master UCITS...
COLL 11 : Master-feeder
arrangements for UCITS schemes

Section 11.5 : Auditors

11.5.2 A

(1) An information-sharing agreement between the auditors that is effective prior to IP completion day need not comply with COLL 11.5.2 R.

(2) This paragraph applies where the applicable law of the information-sharing agreement between the auditors was:
   (a) United Kingdom law before IP completion day, and remains so; or
   (b) the law of a given EEA State before IP completion day, and remains so.

Preparation of the audit report

11.5.3

When preparing its audit report, the auditor of a feeder UCITS must:

(1) take into account the audit report of the master UCITS; and

(2) report on any irregularities revealed in the audit report of the master UCITS and their impact on the feeder UCITS.

[Note: article 62(2) first paragraph first sentence and second paragraph of the UCITS Directive]

11.5.4

Where a master UCITS and one or more of its feeder UCITS have different accounting years, the auditor of the master UCITS must make an ad hoc report on the closing date of the accounting year of each feeder UCITS.

[Note: article 62(2) first paragraph second sentence of the UCITS Directive]

Disclosure by an auditor

11.5.5

Section 351A of the Act provides that where an auditor of an AUT or ACS which is a master UCITS or a feeder UCITS, or any person acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the UCITS Directive, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The OEIC Regulations (see regulation 83A) contain corresponding provisions for auditors of ICVCs that are feeder UCITS and master UCITS.
Responsibility of authorised fund managers

The authorised fund managers of a master UCITS and a feeder UCITS must ensure that the terms on which auditors of their respective schemes are appointed require each auditor to comply with the rules in this section.
11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1

(1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the Act, provide that where a master UCITS is wound up, for whatever reason, the FCA is to direct the manager and trustee of any AUT or the authorised contractual scheme manager and depositary of any ACS which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) the FCA approves under section 283A (Master-feeder structures) of the Act the investment by the feeder UCITS of at least 85% in value of the scheme property in units of another master UCITS; or

(b) the FCA approves under section 252A or section 261S (Proposal to convert to a non-feeder UCITS) of the Act an amendment of the trust deed or contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

(2) Section 258A(3) and (4) and section 261Z(3) and (4) of the Act further providethat where a master UCITS merges with another UCITS or is divided into two or more UCITS, the FCA is to direct the manager and trustee of any AUT or the authorised contractual scheme manager and depositary of any ACS which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) the FCA approves under section 283A of the Act the investment by the feeder UCITS of at least 85% in value of the scheme property in units of:

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS; or

(b) the FCA approves under section 252A or section 261S of the Act an amendment of the trust deed or contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

(3) The OEIC Regulations (see regulations 33A and 33B respectively) contain corresponding provisions for feeder UCITS which are structured as ICVCs.
Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

11.6.2

(1) The commencement of winding up of a UCITS scheme that is a master UCITS must take place no sooner than 3 months after a notification is made to its unit holders and the FCA informing it of the binding decision to wind up the master UCITS.

(2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the United Kingdom regarding the compulsory liquidation of AUTs, ACSs or IVCs.

[Note: article 60(4) last sentence of the UCITS Directive]

Application for approval by a feeder UCITS where a master UCITS is wound up

11.6.3

Where the authorised fund manager of a UCITS scheme that is a feeder UCITS is notified that its master UCITS is to be wound up, it must submit to the FCA the following:

(1) where the authorised fund manager of the feeder UCITS intends to invest at least 85% in value of the scheme property in units of another master UCITS:

(a) its application for approval under section 283A of the Act for that investment;

(b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the Act, section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary) or regulation 21 (The Authority’s approval for certain changes in respect of a company) of the OEIC Regulations of any proposed amendments to its instrument constituting the fund;

(c) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) (Provision and filing of the prospectus) and COLL 4.7.7 R (1) (Revision and filing of key investor information); and

(d) the other documents required in accordance with COLL 11.2.2 R (Application for approval of an investment in a master UCITS);

(2) where the authorised fund manager of the feeder UCITS intends to convert it into a UCITS scheme that is not a feeder UCITS:

(a) its application for approval under section 252A or section 261S of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to its instrument constituting the fund; and

(b) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1); and

(3) where the authorised fund manager of the feeder UCITS intends to wind up the scheme, a notice under section 251 or section 261Q of
the Act or regulation 21 of the OEIC Regulations of a proposal to that effect.

[Note: article 20(1) of the UCITS implementing Directive No 2]

Timing of applications for approval: winding up of a master UCITS

11.6.4 R

1. The information in COLL 11.6.3 R must be submitted no later than two months after the date on which the master UCITS has informed the authorised fund manager of the feeder UCITS of the binding decision to be wound up.

2. By way of derogation from (1), where the master UCITS has informed the authorised fund manager of the feeder UCITS of the binding decision to be wound up more than five months before the date at which the winding up will start, the authorised fund manager must submit the information to the FCA at the latest three months before the day the winding up will start.

[Note: article 20(1) first sentence and article 20(2) of the UCITS implementing Directive No 2]

Application for approval by a feeder UCITS where a master UCITS merges or divides

11.6.5 R

Where the authorised fund manager of a UCITS scheme that is a feeder UCITS is notified that the master UCITS is to merge with another UCITS scheme or EEA UCITS scheme or divide into two or more such schemes, it must submit to the FCA the following:

1. where the authorised fund manager of the feeder UCITS intends it to continue to be a feeder UCITS of the same master UCITS:
   (a) its application under section 283A of the Act, for approval;
   (b) where applicable, a notice under section 251 or section 261Q of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to the instrument constituting the fund; and
   (c) where applicable, the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1);

2. where the authorised fund manager of the feeder UCITS intends it to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS, or intends the feeder UCITS to invest at least 85% in value of the scheme property in units of another master UCITS not resulting from the merger or division:
   (a) its application under section 283A of the Act for approval of that investment;
   (b) where applicable, a notice under section 251 or section 261Q of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to the instrument constituting the fund;
(c) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and
   COLL 4.7.7 R (1);
(d) the other documents required in accordance with COLL 11.2.2 R;

(3) where the authorised fund manager of the feeder UCITS intends it to convert into a UCITS scheme that is not a feeder UCITS:

(a) its application for approval under section 252A or section 261S of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to the instrument constituting the fund; and
(b) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1); and

(4) where the authorised fund manager of the feeder UCITS intends to wind up the scheme, a notice under section 251 or section 261Q of the Act or regulation 21 of the OEIC Regulations of a proposal to that effect.

[Note: article 22(1) of the UCITS implementing Directive No 2]

Interpretation of COLL 11.6.5R

(1) For the purposes of COLL 11.6.5R (1), a feeder UCITS will be considered as continuing to be a feeder UCITS of the same master UCITS where:

(a) the master UCITS is the receiving UCITS in a proposed UCITS merger; or
(b) the master UCITS is to continue materially unchanged as one of the resulting UCITS schemes or EEA UCITS schemes in a proposed division.

(2) For the purposes of COLL 11.6.5R (2), a feeder UCITS will be considered as becoming a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS where:

(a) the master UCITS is the merging UCITS and, as a result of the UCITS merger, the feeder UCITS becomes a unitholder of the receiving UCITS; or
(b) the feeder UCITS as a result of the division becomes a unitholder of a UCITS scheme or EEA UCITS scheme that is materially different to the master UCITS.

[Note: article 22(2) of the UCITS implementing Directive No 2]

Timing of applications for approval: merger or division of a master UCITS

(1) The information in COLL 11.6.5 R must be submitted to the FCA no later than one month after the date on which the authorised fund manager of the feeder UCITS has received the information of the planned merger or division in accordance with regulation 13(6) of the UCITS Regulations 2011.
(2) By way of derogation from (1), where the master UCITS provides the information referred to in, or comparable with, \textit{COLL 7.7.10 R} (Information to be given to Unitholders) to the authorised fund manager of the feeder UCITS more than four months before the proposed effective date of the merger or division of the master UCITS, the authorised fund manager must submit the information to the FCA at least three months before the proposed effective date.

[Note: article 22(1) first sentence and article 22(3) of the \textit{UCITS implementing Directive No 2}]

Repurchase or redemption of units in a master UCITS

\textbf{\textit{Regulation 12(4) (Right of redemption) of the UCITS Regulations 2011}} provides that where a \textit{UK master UCITS} merges with another scheme, the master UCITS must enable its feeder UCITS to repurchase or redeem all the units of the master UCITS in which they have invested before the consequences of the merger become effective, unless the FCA approves the continued investment by the feeder UCITS in a master UCITS resulting from the merger.

\textbf{\textit{11.6.8}}  
\textit{G}

(1) Where:

(a) the authorised fund manager of a feeder UCITS has submitted the documents required under \textit{COLL 11.6.5R} (2) and (3); and

(b) does not receive the necessary approvals from the FCA by the business day preceding the last day on which the authorised fund manager of the feeder UCITS can request repurchase or redemption of its units in the master UCITS;

the authorised fund manager of the feeder UCITS must exercise the right to repurchase or redeem its units in the master UCITS under regulation 12(4) of the \textit{UCITS Regulations 2011}.

(2) The authorised fund manager of the feeder UCITS must also exercise the right in (1) to ensure that the right of its own unitholders to request repurchase or redemption in the feeder UCITS in accordance with \textit{COLL 4.8.3 R} (1)(d) (Information to be provided to Unitholders) is not affected.

(3) Before exercising the right in (1), the authorised fund manager of the feeder UCITS must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(4) Where the authorised fund manager of the feeder UCITS requests repurchase or redemption in accordance with (1), it must receive one of the following:

(a) the repurchase or redemption proceeds in cash; or

(b) some or all of the repurchase or redemption proceeds as a transfer in kind, where the authorised fund manager of the feeder UCITS so wishes and where its instrument constituting the fund and the master-feeder agreement provide for it.
(5) Where (4)(b) applies, the authorised fund manager of the feeder UCITS may realise any part of the transferred assets for cash at any time.

[Note: articles 23(4) and 23(5) of the UCITS implementing Directive No 2]

**Conditions on reinvestment of cash**

Where:

1. the FCA approves an application under sections 283A (Master-feeder structures), 252A or 261S (Proposal to convert to a non-feeder UCITS) of the Act or regulation 22A of the OEIC Regulations that arises as a result of the winding-up, merger or division of the master UCITS (other than an application pursuant to COLL 11.6.5R (1)); and

2. the authorised fund manager of the feeder UCITS holds or receives cash in accordance with COLL 11.6.9R (4) or as a result of a winding-up;

the authorised fund manager may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the feeder UCITS invests in units of the master UCITS in accordance with COLL 11.3.2R (3) (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[Note: article 23(6) of the UCITS implementing Directive No 2]

**Requirements following approval by the FCA**

Where the authorised fund manager of a feeder UCITS has submitted the documents required under COLL 11.6.3R (1), COLL 11.6.3R (2), COLL 11.6.5R (1), COLL 11.6.5R (2) or COLL 11.6.5R (3) and has received written notice of any required approvals from the FCA, it must:

1. inform the master UCITS of those approvals; and

2. in the case of the required approvals received in respect of documents submitted under COLL 11.6.3R (1) and COLL 11.6.5R (2), take the necessary measures to comply with the requirements of COLL 4.8.3R as soon as possible.

[Note: articles 21(2), 21(3), 23(2) and 23(3) of the UCITS implementing Directive No 2]

**Notification by feeder UCITS of intention to be wound up**

Where the authorised fund manager of a feeder UCITS gives notice to the FCA under section 251 or section 261Q of the Act or regulation 21 of the OEIC Regulations that it intends to wind up the scheme, it must inform:
(1) the unitholders of the feeder UCITS; and

(2) where notice is given under COLL 11.6.5R (4) (Application for approval by a feeder UCITS where a master UCITS merges or divides), the authorised fund manager of the master UCITS;

of its intention without undue delay.

[Note: articles 20(3) and 22(4) of the UCITS implementing Directive No 2]
## Contents of the standard master-feeder agreement

This table belongs to the *rule* on the conclusion and prescribed content of a standard *master-feeder agreement* (COLL 11.3.2R (1)).

<table>
<thead>
<tr>
<th></th>
<th>Provisions related to access to information by a <em>master UCITS</em> and a <em>feeder UCITS</em>:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>a. how and when the <em>master UCITS</em> provides the <em>feeder UCITS</em> with a copy of it <em>instrument constituting the fund</em>, <em>prospectus</em> and <em>key investor information</em> or any amendment of them;</td>
</tr>
<tr>
<td></td>
<td>b. how and when the <em>master UCITS</em> informs the <em>feeder UCITS</em> of a delegation of investment management and risk management functions to third parties in accordance with COLL 6.6.15AR;</td>
</tr>
<tr>
<td></td>
<td>c. where applicable, how and when the <em>master UCITS</em> provides the <em>feeder UCITS</em> with internal operational documents, such as its risk management process and its compliance reports;</td>
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<tr>
<td></td>
<td>d. what details of breaches by the <em>master UCITS</em> of:</td>
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<td></td>
<td>i. the law;</td>
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<td></td>
<td>ii. the <em>instrument constituting the fund</em>; and</td>
</tr>
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<td></td>
<td>iii. the <em>master-feeder agreement</em>;</td>
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<td></td>
<td>must be notified to the <em>feeder UCITS</em> and the manner and timing thereof;</td>
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<tr>
<td></td>
<td>e. where a <em>feeder UCITS</em> uses <em>derivatives</em> for hedging purposes, how and when the <em>master UCITS</em> will provide the <em>feeder UCITS</em> with information about its actual exposure to <em>derivatives</em> to enable the <em>feeder UCITS</em> to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and</td>
</tr>
<tr>
<td></td>
<td>f. a statement that the <em>master UCITS</em> must inform the <em>feeder UCITS</em> of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the <em>master UCITS</em> makes those other information-sharing arrangements available to the <em>feeder UCITS</em>.</td>
</tr>
</tbody>
</table>

**[Note: article 8 of the UCITS implementing Directive No 2]**

| (2) | Provisions related to the basis of investment and divestment by the *feeder UCITS*: |
|     | a. a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*; |
|     | b. the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and |
|     | c. where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*. |

**[Note: article 9 of the UCITS implementing Directive No 2]**

| (3) | Provisions related to standard dealing arrangements: |
|     | a. co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of *units*; |
|     | b. co-ordination of transmission of dealing orders by the *feeder UCITS*, including, where applicable, the role of transfer agents or any other third party; |
|     | c. where applicable, any arrangements necessary to take account of the fact that the *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market; |
(d) where necessary, appropriate measures to ensure compliance with the require-
ments in COLL 11.3.6 R (Avoidance of opportunities for market timing);

(e) where the units of the feeder UCITS and the master UCITS are denominated in dif-
f erent currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or subscriptions and repur-
chases or redemptions of units of the master UCITS including, where agreed be-
tween the parties, the terms on which the master UCITS may settle redemption re-
quests by a transfer of assets in kind to the feeder UCITS, notably where a master 
UCITS is wound up, merges with another UCITS scheme or EEA UCITS scheme or di-
vides into two or more such schemes;

(4) Provisions related to events affecting dealing arrangements:

(a) the manner and timing of a notification by either the master UCITS or the feeder 
UCITS of the temporary suspension and resumption of repurchase, redemption, 
purchase or subscription of its units; and

(b) the arrangements for notifying and resolving pricing errors in the master UCITS.

[Note: article 10 of the UCITS implementing Directive No 2]

(5) Provisions related to the standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, 
the co-ordination of the production of their periodic reports; and

(b) where the feeder UCITS and the master UCITS have different accounting years, ar-
rangements for the feeder UCITS to obtain any necessary information from the 
master UCITS to enable it to produce its periodic reports on time and which en-
sure that the auditor of the master UCITS is in a position to produce an ad hoc re-
port on the closing date of the accounting year of the feeder UCITS in accordance 
with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 12 of the UCITS implementing Directive No 2]

(6) Provisions related to changes to the standing arrangements:

How and when notice is to be given:

(a) by the master UCITS of proposed and effective amendments to its instru-
ment constituting the fund, prospectus and key investor information, if 
these details differ from the standard arrangements for notification of 
unitholders laid down in the instrument constituting the fund or pros-
spectus of the master UCITS;

(b) by the master UCITS of a planned or proposed winding up, merger or 
division;

(c) by either the feeder UCITS or the master UCITS that it has ceased or will 
 cease to meet the qualifying conditions to be a feeder UCITS or a master 
UCITS respectively;

(d) by either the feeder UCITS or the master UCITS that it intends to replace 
its management company, its depositary, its auditor or any third party 
which is mandated to carry out investment management or risk manage-
ment functions; and

(e) by the master UCITS of other changes to standing arrangements that it 
undertakes to provide.

[Note: article 13 of the UCITS implementing Directive No 2]
## Contents of the internal conduct of business rules

This table belongs to the rule on the conclusion and prescribed content of the internal conduct of business rules (COLL 11.3.2R (2)).

<table>
<thead>
<tr>
<th>(1)</th>
<th>Provisions related to conflicts of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>The internal conduct of business rules referred to in COLL 11.3.2R (2) must include appropriate measures to mitigate conflicts of interest that may arise between:</td>
</tr>
<tr>
<td></td>
<td>(i) the feeder UCITS and the master UCITS; or</td>
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<tr>
<td></td>
<td>(ii) the feeder UCITS and other unitholders of the master UCITS;</td>
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<tr>
<td></td>
<td>to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet the requirements of the provisions listed in (b).</td>
</tr>
<tr>
<td>(b)</td>
<td>The provisions referred to in (a) are:</td>
</tr>
<tr>
<td></td>
<td>(i) SYSC 10.1.4 R (Types of conflicts);</td>
</tr>
<tr>
<td></td>
<td>(ii) SYSC 10.1.6 R (Record of conflicts);</td>
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<tr>
<td></td>
<td>(iii) SYSC 10.1.10 R (Conflicts policy);</td>
</tr>
<tr>
<td></td>
<td>(iv) SYSC 10.1.11 R (Contents of policy);</td>
</tr>
<tr>
<td></td>
<td>(v) SYSC 10.1.17 R (Additional requirements for a management company);</td>
</tr>
<tr>
<td></td>
<td>(vi) SYSC 10.1.19 R (Structure and organisation of a management company);</td>
</tr>
<tr>
<td></td>
<td>(vii) SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);</td>
</tr>
<tr>
<td></td>
<td>(viii) SYSC 10.1.21 R (Disclosure of conflicts for a management company); and</td>
</tr>
<tr>
<td></td>
<td>(ix) COLL 6.6A.6 R (Strategies for the exercise of voting rights);</td>
</tr>
<tr>
<td></td>
<td>or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the UCITS Directive and Chapter III of the UCITS implementing Directive.</td>
</tr>
</tbody>
</table>

**[Note: article 15 of the UCITS implementing Directive No 2]**

<table>
<thead>
<tr>
<th>(2)</th>
<th>Provisions related to the basis of investment and divestment by the feeder UCITS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>a statement of which classes of units of the master UCITS are available for investment by the feeder UCITS;</td>
</tr>
<tr>
<td>(b)</td>
<td>the charges and expenses to be borne by the feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS; and</td>
</tr>
<tr>
<td>(c)</td>
<td>where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.</td>
</tr>
</tbody>
</table>

**[Note: article 16 of the UCITS implementing Directive No 2]**

<table>
<thead>
<tr>
<th>(3)</th>
<th>Provisions related to standard dealing arrangements:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;</td>
</tr>
<tr>
<td>(b)</td>
<td>co-ordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;</td>
</tr>
<tr>
<td>(c)</td>
<td>where applicable, any arrangements necessary to take account of the fact that units of the master UCITS or the feeder UCITS are listed or traded on a secondary market;</td>
</tr>
</tbody>
</table>
(d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably where a master UCITS is wound up, merges with another UCITS scheme or EEA UCITS scheme or divides into two or more such schemes; and

(g) where the instrument constituting the fund and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

[Note: article 17 of the UCITS implementing Directive No 2]

(4) Provisions related to events affecting dealing arrangements:

(a) the manner and timing of notification by either the master UCITS or the feeder UCITS of the temporary suspension and resumption of repurchase, redemption, purchase or subscription of its units; and

(b) the arrangements for notifying and resolving pricing errors in the master UCITS.

[Note: article 18 of the UCITS implementing Directive No 2]

(5) Provisions related to the standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the co-ordination of the production of their periodic reports; and

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the accounting year of the feeder UCITS in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 19 of the UCITS implementing Directive No 2]
Chapter 12

Management company and product passports under the UCITS Directive [deleted]
Chapter 13

Operation of feeder NURS
13.1 Introduction

Application

13.1.1 This chapter applies to:

(1) the authorised fund manager of a feeder NURS;

(2) an ICVC that is a feeder NURS;

(3) the authorised fund manager of a UCITS scheme or non-UCITS retail scheme which operates as a qualifying master scheme to a feeder NURS; and

(4) (in the case of COLL 13.2.6 R (Inducements) only) any person acting on behalf of either the feeder NURS or the authorised fund manager of the feeder NURS.

Purpose

13.1.2 This chapter sets out various obligations, additional to those found elsewhere in the Handbook, that persons listed in COLL 13.1.1 R must comply with in relation to the operation of a feeder NURS and its qualifying master scheme.
13.2 Operational requirements for feeder NURS

Application

13.2.1 R This section applies as follows:

(1) COLL 13.2.2 R to COLL 13.2.6 R apply to the authorised fund manager of a feeder NURS;

(2) COLL 13.2.6 R also applies to:
   (a) an ICVC that is a feeder NURS; and
   (b) any person acting on behalf of either the feeder NURS or the authorised fund manager of the feeder NURS; and

(3) COLL 13.2.7 R applies to the authorised fund manager of a UCITS scheme or a non-UCITS retail scheme which operates as a qualifying master scheme to a feeder NURS.

Pre-investment requirements of the authorised fund manager of a feeder NURS

13.2.2 R Before investing in the qualifying master scheme, the authorised fund manager of the feeder NURS must:

(1) be satisfied on reasonable grounds that the authorised fund manager can obtain from the qualifying master scheme all the information necessary to comply on an ongoing basis with the rules in COLL;

(2) having consulted with the depositary of the feeder NURS, be satisfied on reasonable grounds that the depositary of the feeder NURS can obtain from the qualifying master scheme, the operator of the qualifying master scheme or the depositary of the qualifying master scheme all the information necessary to comply with its duties under COLL 6.6.4 R (General duties of the depositary); and

(3) where the qualifying master scheme is a UCITS scheme or a non-UCITS retail scheme, inform the authorised fund manager of the qualifying master scheme of the date on which the feeder NURS will begin to invest into the qualifying master scheme as a feeder NURS.
Ownership of units in a feeder NURS

13.2.3 The authorised fund manager of a feeder NURS must take reasonable care to ensure that its units are not owned, including beneficially owned, by the qualifying master scheme.

Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

13.2.4 (1) Where the operator of a qualifying master scheme or the authorised fund manager of a qualifying master scheme imposes any charge which is, or is equivalent in effect to, a preliminary charge or redemption charge on the feeder NURS for the acquisition or disposal of units in the qualifying master scheme, the authorised fund manager of the feeder NURS must pay to the feeder NURS an amount equal to such charge within four business days following the relevant acquisition or disposal.

(2) In this rule, where the operator of a qualifying master scheme or authorised fund manager of a qualifying master scheme requires any addition to or deduction from the consideration paid on the acquisition or disposal of units in the qualifying master scheme which is, or is equivalent in effect to, a dilution levy made in accordance with COLL 6.3.8 R (Dilution), it is to be treated as part of the price of the units and not as part of any preliminary charge or redemption charge referred to in (1).

Avoidance of opportunities for market timing

13.2.5 The authorised fund manager of a feeder NURS must take appropriate measures to co-ordinate the timing of the feeder NURS' net asset value calculation and publication with those of its qualifying master scheme, including the publication of dealing prices, in order to avoid market timing of their units, and prevent arbitrage opportunities.

Inducements

13.2.6 Where, in connection with an investment in the units of the qualifying master scheme, a distribution fee, commission or other monetary benefit is received by:

(1) a feeder NURS; or

(2) an authorised fund manager of a feeder NURS; or

(3) any person acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the scheme property of the feeder NURS within four business days of receipt of that fee, commission or other monetary benefit.

Obligations to Unitholders of a qualifying master scheme

13.2.7 Where the qualifying master scheme is a UCITS scheme or a non-UCITS retail scheme, the authorised fund manager of the qualifying master scheme must
not, if it would unfairly prejudice the interests of unitholders of the qualifying master scheme other than the feeder NURS, provide or make available information to the authorised fund manager of the feeder NURS without at the same time also providing or making available that information to the unitholders of the qualifying master scheme other than the feeder NURS.
Chapter 14

Charity authorised investment funds
14.1 Introduction

Application

This chapter applies to:

1. an authorised fund manager of a charity authorised investment fund;
2. an ICVC that is a charity authorised investment fund;
3. the depositary of a charity authorised investment fund; and
4. the authorised fund manager and the depositary of an authorised fund that was previously registered as a charity with the Charity Commission.

Purpose

This chapter sets out modifications to the rules and guidance in this sourcebook for authorised fund managers and depositaries of charity authorised investment funds.

Types of charity authorised investment fund

1. A charity authorised investment fund may be:
   a. a UCITS scheme; or
   b. a non-UCITS retail scheme;
   c. a qualified investor scheme; or
   d. a long-term asset fund.

2. A charity authorised investment fund may be structured as:
   a. an authorised unit trust (AUT); or
   b. an investment company with variable capital (ICVC); or
   c. an authorised contractual scheme (ACS).
14.2 Registration with the Charity Commission

14.2.1 The authorised fund manager of a charity authorised investment fund must notify the FCA without undue delay when it receives its registration as a charity from the Charity Commission.

14.2.2 The authorised fund manager and the depositary of an authorised fund that was previously registered as a charity with the Charity Commission must notify the FCA without undue delay when it ceases to be registered as a charity with the Charity Commission.
14.3 Advisory committee

A charity authorised investment fund may have an advisory committee which is independent from the authorised fund manager and the depositary if the advisory committee has a consultative function only.

If the charity authorised investment fund has an advisory committee the authorised fund manager must ensure that:

1. the instrument constituting the fund sets out the role and responsibilities of the advisory committee; and

2. the prospectus contains at least the following information about the advisory committee:

   a. a description of its role and responsibilities;
   b. its membership;
   c. how its members are nominated and how their membership is terminated; and
   d. how meetings are called and operated, including the quorum.

If the charity authorised investment fund has an advisory committee, the authorised fund manager must ensure that on the request of the committee, the scheme’s annual long report includes a statement prepared and approved by the committee.

The statement may address matters such as:

1. how the advisory committee is discharging its role and responsibilities as set out in the instrument constituting the fund;

2. any observations the committee may have on how the authorised fund manager has carried out its functions during the annual accounting period; and

3. any other matters the committee considers of interest to the unitholders of the charity authorised investment fund.

The authorised fund manager or depositary must convene a general meeting of unitholders if it receives a notice from the advisory committee of a charity authorised investment fund which:

1. 

2. 

3. 
(a) states the objects of the meeting;
(b) is dated; and
(c) is signed by or on behalf of the advisory committee.

(2) The authorised fund manager or the depositary must ensure the general meeting of the authorised fund takes place no later than eight weeks after receipt of the notice in (1).

14.3.6 The authorised fund manager and depositary of a charity authorised investment fund must keep records of any dealings with an advisory committee for at least five calendar years.
14.4 Income allocation and distribution

Income reserve account

14.4.1 As an exception to COLL 6.8.3R(3) (Income allocation and distribution), a charity authorised investment fund is not required to transfer income to a distribution account where this is allowed by COLL 14.4.2R.

14.4.2 (1) The authorised fund manager and the depositary of a charity authorised investment fund may establish an income reserve account for the scheme if this is provided for in:
   (a) the instrument constituting the fund; and
   (b) the prospectus.

(2) (a) The authorised fund manager may instruct the depositary to transfer up to 15% of the income available for allocation or distribution on an annual income allocation date to the income reserve account.

   (b) Any income transferred under (a) remains part of the income property of the scheme but is not available for allocation or distribution.

   (c) The transfer in (a) must be for the sole purpose of avoiding fluctuations in the income available for allocation or distribution for the annual accounting period.

(3) The authorised fund manager may instruct the depositary to transfer income in the income reserve account to the income account.

(4) The authorised fund manager and the depositary must treat:

   (a) any income transferred from the income reserve account to the income account as income available for allocation or distribution at the next annual income allocation date; and

   (b) any interest or other amounts earned on the income in the income reserve account as income due to the scheme.

14.4.3 The authorised fund manager of a charity authorised investment fund with an income reserve account must not allow a payment that has been allocated to income property in the first instance to be made from the capital account if that payment could be met, in whole or in part, by transferring income from the income reserve account to the income account.
14.4.4 R  

(1) 

■ COLL 14.4.1R ceases to apply if the scheme commences winding up or termination in accordance with:

(a) ■ COLL 7.3.6R (Consequences of commencement of winding up or termination) for an ICVC; or

(b) ■ COLL 7.4.3R (When an AUT is to be wound up or a sub-fund terminated) for an AUT; or

(c) ■ COLL 7.4A.4R (When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated) for an ACS.

(2) Any income in the income reserve account must be transferred to the income account as soon as practicable after the winding up or termination commences.

Total return approach

14.4.5 R  

(1) The authorised fund manager and depositary of a charity authorised investment fund may adopt a total return approach to the allocation or distribution of income where this is provided for in:

(a) the instrument constituting the fund; and

(b) the prospectus.

(2) Under a total return approach the authorised fund manager may make transfers between the capital account and the income account in addition to those in ■ COLL 6.8.3R(3A)(c).

(3) The authorised fund manager and depositary must ensure that any transfer under a total return approach:

(a) is solely for the purpose of meeting the pre-determined target amount disclosed in the prospectus in accordance with ■ COLL 14.4.6R(1); and

(b) is consistent with the explanation given in the prospectus in accordance with ■ COLL 14.4.6R(2).

14.4.6 R  

If the charity authorised investment fund has adopted a total return approach to the allocation or distribution of income, the authorised fund manager must ensure that the prospectus contains:

(1) the pre-determined target of the income available for allocation or distribution in any annual accounting period; and

(2) an explanation of how the target amount is consistent with the investment objective and policy and the distribution policy of the scheme.
15.1 Introduction

Application

15.1.1 (1) This chapter applies to:

(a) an authorised fund manager of an AUT, ACS or an ICVC;
(b) any other director of an ICVC;
(c) the depositary of an AUT, ACS or an ICVC; and
(d) an ICVC, which is a long-term asset fund.

(2) Where this chapter refers to rules in any other chapter of this sourcebook, those rules and any relevant guidance should be applied as if they referred to long-term asset funds.

Purpose

15.1.2 (1) This chapter assists in achieving the statutory objective of securing an appropriate degree of protection for consumers in respect of authorised funds that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in a UCITS scheme or a non-UCITS retail scheme.

(2) A long-term asset fund is essentially a type of scheme where different types of permitted asset may be included as part of the scheme property, depending on the investment objectives and policy of that scheme and within any restrictions in the rules. The FCA expects the investment strategy of an LTAF to be to invest at least 50% of the scheme property of an LTAF in assets that are illiquid and need to be held over the longer term.

(3) In comparison to qualified investor schemes, long-term asset funds have greater flexibility in their investment powers. Therefore, to assist the FCA in achieving the statutory objective of securing an appropriate degree of protection for consumers, this chapter balances this additional flexibility by placing other requirements on the authorised fund managers and depositaries of LTAFs.

(4) This chapter ceases to apply where a long-term asset fund has converted to be authorised as a UCITS scheme, a non-UCITS retail scheme or a qualified investor scheme.
Long-term asset funds: eligible investors

15.3 R

(1) Subject to (3), the authorised fund manager of a long-term asset fund must take reasonable care to ensure that ownership of units in that scheme is recorded in the register only for a person to whom such units may be promoted under COBS 4.12.4R (Exemptions from the restrictions on the promotion of non-mainstream pooled investments).

(2) In addition to (1), the authorised contractual scheme manager of a long-term asset fund which is an ACS must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that meets the criteria set out in COLL 15 Annex 1R (ACS Long-term asset funds: eligible investors).

(3) The authorised fund manager will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Long-term asset funds - explanation

15.4 G

(1) Long-term asset funds are authorised funds which are intended only for professional clients and for retail clients who are sophisticated investors or certified high net worth investors. For this reason, long-term asset funds are subject to a restriction on promotion under COBS 4.12.3R (Restrictions on the promotion of non-mainstream pooled investments).

(2) The authorised contractual scheme manager of a long-term asset fund which is an ACS must take reasonable care to ensure that it accepts subscription to units in the LTAF only from a person to whom such units may be promoted under COBS 4.12.4R (Exemptions from the restrictions on the promotion of non-mainstream pooled investments) and who also meets the criteria in COLL 15 Annex 1R.

Application and notification procedures

15.5 G

Details of the application procedures in respect of long-term asset funds are contained in COLL 2.1 (Authorised fund applications). Further information is available on the FCA website at www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-authorisation.
15.2 Eligibility to act as the authorised fund manager

Application

This section applies to:

(1) the authorised fund manager of an AUT, ACS or an ICVC;
(2) any other director of an ICVC;
(3) the depositary of an AUT, ACS or an ICVC; and
(4) an ICVC, which is a long-term asset fund.

Authorised fund manager to be a full-scope UK AIFM

The authorised fund manager of a long-term asset fund must be a full-scope UK AIFM.

15.2.1 R

15.2.2 R

15.2.3 G

(1) To ensure an appropriate degree of consumer protection, only a full-scope UK AIFM is able to act as the authorised fund manager for an LTAF.

(2) Full-scope UK AIFMs that manage authorised AIFs are subject to the requirements of both COLL and FUND, and must also comply with any other applicable provisions of the UK AIFM regime, including the AIFMD level 2 regulation and the AIFMD UK regulation. Small authorised UK AIFMs are subject to a more limited set of rules and requirements.

Competence and resources of the authorised fund manager

15.2.4 R

(1) The authorised fund manager of a long-term asset fund must, having regard to the investment objectives, policy and strategy of the LTAF:

(a) possess the knowledge, skills and experience necessary to understand the activities of the LTAF and, in particular, the risks involved in those activities and the assets which the LTAF holds (or is to hold) in the scheme property; and

(b) employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.
(2) The authorised fund manager may not rely on a delegation or outsourcing arrangement to satisfy (1).

15.2.5 The authorised fund manager of a long-term asset fund must at all times be able to demonstrate to the FCA that it complies with COLL 15.2.4R.

[Note: Article 22 of the AIFMD level 2 regulation.]

Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets

(1) The authorised fund manager of a long-term asset fund must appoint an external valuer to perform the valuation function for the LTAF, but this is subject to (2) and (5).

(2) The authorised fund manager need not appoint an external valuer under (1) if:

(a) the authorised fund manager possesses the knowledge, skills and experience necessary to be able to carry out a proper and independent valuation of the assets and types of assets which the long-term asset fund holds or is to hold (see FUND 3.9.4R); and

(b) the depositary of the long-term asset fund, having made an assessment of the matters in (a), has determined that the authorised fund manager has the resources and procedures for carrying out a valuation of those assets in accordance with the applicable law, the instrument constituting the fund and FUND 3.9 (Valuation).

(3) The depositary must:

(a) review its determination under (2)(b):

(i) regularly, and in any event at least annually; and

(ii) whenever the depositary becomes aware of any circumstances which could affect the determination;

(b) for a period of six years, keep a written record of its determination under (2)(b) and any review under (3)(a), and the reasons for the assessment; and

(c) provide the FCA with a copy of the written record on request.

(4) Where the authorised fund manager performs the valuation function itself in accordance with (2), the authorised fund manager may appoint, as applicable:

(a) for the purpose of valuing immovables in accordance with COLL 15.6.18R (Investment in property), an appropriate valuer;

(b) for the purpose of valuing immovables in accordance with COLL 15.6.22R (Standing independent valuer and valuation), a standing independent valuer;

(c) for the purpose of valuing an asset other than an immovable or property, a delegate appointed in accordance with FUND 3.10 (Delegation) and the relevant provisions of section 8 (Delegation of AIFM functions) of Chapter III of the AIFMD level 2 regulation.
(5) The authorised fund manager need not appoint an external valuer under (1) if:

(a) the scheme property of the long-term asset fund is constituted solely of units or shares in other collective investment schemes or AIFs; and

(b) an external valuer performs the valuation function of each such collective investment scheme or AIF.

[Note: FUND 3.9 (Valuation), FUND 3.10 (Delegation), FUND 3.11.25R (Depositary functions: oversight), article 19(5) of AIFMD, and articles 67 to 74 (Valuation) and article 94(4) (Duties regarding the valuation of shares/units) of the AIFMD level 2 regulation.]

15.2.7 Where an authorised fund manager appoints an external valuer under COLL 15.2.6R(1) certain additional requirements apply. For example, FUND 3.9.7R(3) (Performance of the valuation function) sets certain conditions relating to the independence of the external valuer, and the authorised fund manager will also need to be able to demonstrate the matters set out in FUND 3.9.9R (Appointment of external valuer). The AIFMD level 2 regulation contains further requirements that apply to the authorised fund manager where an external valuer is used. Certain requirements also apply to the external valuer and the depositary of an LTAF with an external valuer.

[Note: Articles 67 to 74 and article 94(4) of the AIFMD level 2 regulation.]

15.2.8 The governing body of the authorised fund manager of a long-term asset fund must:

(1) possess the collective knowledge, skills and experience to be able to understand the authorised fund manager’s activities, in particular, the main risks involved in those activities and the assets in which the long-term asset fund is invested;

(2) have members that commit sufficient time to properly perform their functions in the authorised fund manager; and

(3) have members that act with honesty, integrity and independence of mind.

[Note: Article 21 of the AIFMD level 2 regulation.]

15.2.9 In order to establish whether an authorised fund manager of a long-term asset fund conducts its activities honestly, fairly and with due skills, the FCA is required to assess various matters, including those set out in articles 21 and 22 of the AIFMD level 2 regulation. In addition, under COLL 15.2.4R, the authorised fund manager must possess the knowledge, skills and experience necessary to understand the activities of the LTAF and, in particular, the risks involved in those activities and the assets which the LTAF holds (or is to hold) in the scheme property without relying on delegation arrangements to satisfy the requirement.

(2) The authorised fund manager of a long-term asset fund is subject to various other requirements relating to its governance arrangements;
its organisational structure; the skills, knowledge, expertise and competence of those it employs; and its obligation to act honestly, fairly and with due skill, care and diligence. See for example the rules in SYSC 4 (General organisational requirements), SYSC 5 (Employees, agents and other relevant persons) and COBS 2.1 (Acting honestly, fairly and professionally).

(3) The authorized fund manager of a long-term asset fund should also note the organisational requirements set out in the AIFMD level 2 regulation; for example, article 57 (General requirements).
15.3 Constitution

Application

15.3.1 This section applies to an authorised fund manager of a long-term asset fund.

Classes of unit

15.3.2 A long-term asset fund may issue such classes of unit as are set out in the instrument constituting the fund, provided the rights of any class are not unfairly prejudicial as against the interests of the unitholders of any other class of units in that scheme.

Names of schemes, sub-funds, and classes of units

15.3.3 (1) The authorised fund manager must ensure that the name of the scheme, a sub-fund or a class of unit is not undesirable or misleading.

(2) The authorised fund manager of a long-term asset fund must include the term ‘long-term asset fund’ or ‘LTAF’ in the name of the scheme and in relation to any sub-fund which is also a long-term asset fund.

Undesirable and misleading names

15.3.4 (1) COLL 6.9.6G (Undesirable and misleading names) contains guidance as to names which may be undesirable or misleading.

(2) The term ‘Long-Term Asset Fund’ or ‘LTAF’ is reserved for a long-term asset fund whose authorised fund manager operates, or proposes to operate, it in accordance with the rules in this chapter.

(3) Only AIFs that are authorised in accordance with the LTIF Regulation may use the designation ‘LTIF’ or ‘long-term investment fund’.

Instrument constituting the fund

15.3.5 (1) The statements and provisions required by COLL 15.3.6R must be included in the instrument constituting the fund of a long-term asset fund.

(2) The instrument constituting the fund must not contain any provision that conflicts with any applicable rule.
### Table: contents of the instrument constituting the fund

This table belongs to COLL 15.3.5R.

1 **Description of the authorised fund**  
Information detailing:  
(1) the name of the authorised fund;  
(2) that the authorised fund is a long-term asset fund;  
(3) in the case of an ICVC, whether the head office of the company is situated in England and Wales, Wales, Scotland or Northern Ireland.

2 **Property Authorised Investment Funds**  
For a property authorised investment fund, a statement that:  
(1) it is a property authorised investment fund;  
(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the scheme; and  
(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the scheme, the authorised fund manager is entitled to delay any redemption or cancellation of units in accordance with 8 if the authorised fund manager reasonably considers such action to be:  
   (a) necessary in order to enable an orderly reduction of the holding to below 10%; and  
   (b) in the interests of the unitholders as a whole.

3 **Constitution**  
The following statements:  
(1) the scheme property of the scheme is entrusted to a depositary for safekeeping (subject to any exception permitted by the rules);  
(2) if relevant, the duration of the scheme is limited and, if so, for how long;  
(3) charges and expenses of the scheme may be taken out of scheme property;  
(4) for an ICVC:  
   (a) what the maximum and minimum sizes of the scheme’s capital are; and  
   (b) the unitholders are not liable for the debts of the company;  
(5) for an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;  
(6) for a co-ownership scheme which is an umbrella, the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund;  
(7) for a limited partnership scheme, that the scheme prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the scheme property, with the effect that the scheme cannot be an umbrella;
(8) for an AUT:
(a) the trust deed:
  (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
  (ii) is binding on each unitholder as if that person had been a party to it, and that the unitholder is bound by its provisions; and
  (iii) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms;
(b) subject to the provisions of the trust deed and all the rules made under section 247 of the Act (Trust scheme rules):
  (i) the scheme property (other than sums held to the credit of the distribution account) is held by the trustee on trust for the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and
  (ii) the sums standing to the credit of any distribution account are held by the trustee on trust to distribute or apply them in accordance with COLL 15.8.18R (Income);
(c) a unitholder is not liable to make any further payment after having paid the price of the units held, and that no further liability can be imposed on the unitholder in respect of those units; and
(d) payments to the trustee by way of remuneration are authorised to be paid (in whole or in part) out of the scheme property; and

(9) for an ACS:
(a) the contractual scheme deed:
  (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
  (ii) is binding on each unitholder as if that person had been a party to it, and that the unitholder is bound by its provisions;
  (iii) authorises and requires the depositary and the authorised contractual scheme manager to do the things required or permitted of them by its terms; and
  (iv) states that units may not be issued to a person other than a person:
    (A) who is a:
      (i) professional ACS investor; or
      (ii) large ACS investor; or
      (iii) person who already holds units in the scheme; and
    (B) to whom units in a long-term asset fund may be promoted under COBS 4.12.4R;
  (v) states that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (iv)(A) and (B);
(vi) states that for a co-ownership scheme:

(A) the scheme property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants);  

(B) the arrangements constituting the scheme are intended to constitute a co-ownership scheme as defined in section 235A(2) of the Act; and  

(C) the operator and depositary are required to wind up the scheme if directed to do so by the FCA in exercise of its power under section 261X (Directions) of the Act;

(vii) states:

(A) whether the transfer of units in the ACS scheme or, for a co-ownership scheme which is an umbrella (sub-funds of which pursue differing policies in relation to transfer of units), in each particular sub-fund, is either:

(i) prohibited; or  

(ii) allowed;  

(B) where a transfer of units is allowed by the scheme or, where appropriate the sub-fund, in accordance with (A)(ii), units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person:  

(i) who is a:  

(1) professional ACS investor; or  

(2) large ACS investor; or  

(3) person who already holds units in the scheme; and  

(ii) to whom units in a long-term asset fund may be promoted under COBS 4.12.4R; and

(vii) states that for a limited partnership scheme, the scheme is not dissolved on any person ceasing to be a limited partner or nominated partner provided that there remains at least one limited partner;

(b) subject to the provisions of the contractual scheme deed and all the rules made under section 261I of the Act (Contractual scheme rules) and for the time being in force:

(i) the scheme property (other than sums standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and

(ii) the sums standing to the credit of any distribution account are held by the depositary to distribute or apply them in accordance with COLL 15.8.18R (Income); and

(c) a unitholder in a co-ownership scheme is not liable to make any further payment after having paid the price of the units held, and that no further liability can be imposed on the unitholder in respect of those units;
(d) a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;

(e) the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business;

(f) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(g) the operator of a co-ownership scheme is authorised to:
   (i) acquire, manage and dispose of the scheme property; and
   (ii) enter into contracts which are binding on unitholders for the purposes of, or in connection with, the acquisition, management or disposal of scheme property.

4 Investment objectives
A statement of the object of the scheme, in particular the types of investments and assets in which it and each sub-fund (where applicable) may invest and that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk.

5 Units in the scheme
A statement of:
1. the classes of units which the scheme may issue, indicating, for a scheme which is an umbrella, which class or classes may be issued in respect of each sub-fund; and
2. the rights attaching to units of each class (including any provisions for the expression in two denominations of such rights).

6 Limitation on issue of and redemption of units
1. Details as to:
   (a) the provisions relating to any restrictions on the right to redeem units in any class; and
   (b) the circumstances in which the issue of the units of any particular class may be limited.
2. A statement setting out the dealing frequency for sales and redemptions of units in the scheme, and the applicable notice period for redemptions.

7 Income and distribution
Details of the person responsible for the calculation, transfer, allocation and distribution of income for any class of unit in issue during the accounting period.

8 Redemption or cancellation of units on breach of law or rules
A statement that where any holding of units by a unitholder is (or is reasonably considered by the authorised fund manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.

9 Base currency
A statement of the base currency of the scheme.

10 Meetings
Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for unitholders.
11 Powers and duties of the authorised fund manager and depositary
Where relevant, details of any function to be undertaken by the authorised fund manager and depositary which the rules in COLL require to be stated in the instrument constituting the fund.

12 Termination and suspension
Details of:
(1) the grounds under which the authorised fund manager may initiate a suspension of the scheme and any associated procedures; and
(2) the methodology for determining the rights of unitholders to participate in the scheme property on winding up.

13 Investment in overseas property through an intermediate holding vehicle
If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

14 Other relevant matters
Details of those matters which enable the scheme, authorised fund manager or depositary to obtain any privilege or power conferred by the rules in COLL which is not otherwise provided for in the instrument constituting the fund.

Limited issue

Units whose issue may be limited can only be issued if permitted by the instrument constituting the fund, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.
15.4 Prospectus and other pre-sale notifications

Application

15.4.1 This section applies to:

1. the authorised fund manager of an AUT, ACS or an ICVC; and
2. an ICVC, which is a long-term asset fund.

Drawing up and availability of a prospectus

15.4.2 (1) An authorised fund manager must ensure that a prospectus of a long-term asset fund is drawn up which contains:

- the information specified in COLL 15.4R (Table: contents of long-term asset fund prospectus);
- the information for investors required by FUND 3.2.2R and FUND 3.2.3R (Prior disclosure of information to investors); and
- the information for investors required by FUND 3.2.5R and FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the scheme’s most recent annual report or half-yearly report.

(2) An authorised fund manager must:

- revise the prospectus immediately upon the occurrence of any materially significant change in the information required to be stated within it;
- include the date of any revision in a prominent manner in the revised prospectus;
- send a copy of the original and any revised prospectus to the FCA; and
- review the prospectus periodically and revise it to take account of any significant change or new matter.

(3) The prospectus must not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units.

(4) The authorised fund manager must ensure that the prospectus does not contain any provision that conflicts with any applicable rule.
(5) An ICVC or the authorised fund manager of an AUT or ACS must offer a copy of the scheme’s most recent prospectus free of charge to any person eligible to invest in a long-term asset fund, prior to the purchase of any units.

(1) The information specified in COLL 15.4.5R (Table: contents of long-term asset fund prospectus) includes the provisions specified in FUND 3.2.2R(1) to FUND 3.2.2R(12) and FUND 3.2.2R(16), as well as certain additional pieces of information. A ‘Note’ indicates whether the information is derived from FUND 3.2.2R.

(2) The authorised fund manager of an LTAF will also need to comply with FUND 3.2.2R by providing investors with the information specified in FUND 3.2.2R(13) to FUND 3.2.2R(15) and FUND 3.2.2R(17).

False or misleading prospectus

The authorised fund manager must ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by the rules in this sourcebook to be included in it.

Table: contents of a long-term asset fund prospectus

This table belongs to COLL 15.4.2R.

1 Document status
A statement that this document is the prospectus of the authorised fund valid as at a particular date which shall be the date of the document.

2 Description of the authorised fund
Information detailing:
(1) the name of the authorised fund;
(2) its FCA product reference number (PRN);
(3) that the authorised fund is either an ICVC, ACS or an AUT;
(4) that the scheme is a long-term asset fund;
(5) where relevant, that the shareholders in an ICVC are not liable for the debts of the authorised fund;
(6) where relevant, the address of the ICVC’s head office and the address in the United Kingdom for service on the ICVC of documents required or authorised to be served on it;
(7) the effective date of the authorisation order made by the FCA and, if the duration of the authorised fund is not unlimited, when it will or may terminate;
(8) the base currency for the authorised fund;
(9) where relevant, the maximum and minimum sizes of the ICVC’s capital;
(10) for an ACS that is a limited partnership scheme, the address of the proposed principal place of business of the limited partnership scheme; and
(11) a description of the other main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the ex-
existence or absence of any legal instruments providing for the recog-
nition and enforcement of judgments.

[Note: FUND 3.2.2R(3).]

3 Investment objectives, policy and strategy

The following particulars, which must be set out fairly, clearly and in
plain language:

(1) Information to enable a unitholder to ascertain:
   (a) the investment objectives of the authorised fund;
   (b) the authorised fund’s investment policy for achieving those investment objectives, including:
      (i) the general nature of the portfolio and any intended specialisation;
      (ii) the policy for providing a prudent spread of risk in the scheme property; and
      (iii) the policy in relation to the exercise of powers to borrow cash and use leverage, including:
         (A) the purposes for which cash borrowing and leverage may be used;
         (B) the nature of the cash borrowing, including whether it is short- or long-term, temporary or otherwise;
         (C) the types and sources of leverage permitted and the associated risks;
         (D) any restrictions on the use of leverage and any collateral and asset reuse arrangements;
         (E) the maximum level of leverage which the authorised fund manager is entitled to employ on behalf of the LTAF;
         (F) an explanation of how and why that is compatible with the objectives of the LTAF;
   (c) whether there are any restrictions in the assets which may be held in the scheme property; and
   (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.

(2) A description of the investment strategy of the long-term asset fund which must comply with COLL 15.6.6R (Long-term asset funds: investment strategy).

[Note: FUND 3.2.2R(1)(a), FUND 3.2.2R(1)(f) and FUND 3.2.2R(1)(g) to 3.2.2R(1)(j).]

4 Feeder LTAFs

If the LTAF is a feeder LTAF:

(1) the name and (where applicable) the FCA product reference number (PRN) of the qualifying master LTAF;
(2) the country or territory where the qualifying master LTAF is established; and
(3) the following details of the qualifying master LTAF:
   (a) its investment objective, policy and strategy, including its risk profile;
(b) the minimum and (if relevant) maximum investment that the feeder LTAF may make in it;

(c) how copies of its prospectus may be obtained;

(d) how the unitholders of the feeder LTAF may obtain further information about it; and

(e) a description of all remuneration or reimbursement of costs payable by the feeder LTAF by virtue of its investment in units of the qualifying master LTAF, as well as the aggregate charges of the two schemes.

[Note: FUND 3.2.2R(1)(b).]

5 Fund of funds

If the LTAF is a fund of funds, information on where the underlying funds are established.

[Note: FUND 3.2.2R(1)(c).]

6 Assets in which the LTAF may invest

A description of the types of assets in which the LTAF may invest, including, where relevant:

(1) for investment in immovables:

(a) the countries or territories in which the authorised fund may invest in immovables;

(b) the authorised fund manager’s policy in relation to insuring any immovables which form part of the scheme property; and

(c) the policy of the authorised fund manager in relation to the granting of options over immovables in the scheme property and the purchase of options on immovables.

(2) if intended, whether the scheme property may consist of units in collective investment schemes (“second schemes”) which are managed by or operated by the authorised fund manager or by one of its associates and a statement as to:

(a) the basis of the maximum amount of the charges in respect of transactions in a second scheme; and

(b) the extent to which any such charges will be reimbursed to the scheme;

(3) if intended, whether the scheme may enter into stock lending arrangements and repo contracts and, if so, what procedures will operate and what collateral will be required.

[Note: FUND 3.2.2R(1)(d).]

7 Investment techniques and associated risks

At least the following information, which must be set out fairly, clearly and in plain language, about the investment techniques that the authorised fund manager may employ and all associated risks, including:

(1) having regard to the investment strategy of the long-term asset fund and the type of assets in which the scheme may invest, an explanation of the risks associated with the scheme investing in those assets and how those risks might crystallise;

(2) any other risks for unitholders investing in the long-term asset fund;

(3) a description of the tools and arrangements the authorised fund manager would propose using, including those required by rules, to mitigate the risks referred to in (1) and (2); and
(4) an explanation of the circumstances in which those tools and arrangements would typically be deployed and the likely consequences for investors.

[Note: FUND 3.2.2R(1)(e).]

8 Procedures to change of strategy or policy
A description of the procedures by which the authorised fund manager of the LTAF may change its investment objective and policy or its investment strategy, or both.

[Note: FUND 3.2.2R(2).]

9 Classes of units
Information as to:
(1) the names of the classes of units in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes;
(2) how unitholders may exercise their voting rights and what these are; and
(3) the circumstances where a mandatory redemption, cancellation or conversion of units from one class to another may be required.

[Note: FUND 3.2.2R(3), (8), (9), (11) and (12).]

10 Identity and duties of the authorised fund manager, depositary, auditor and other service providers, and investors’ rights
(1) The following particulars of the authorised fund manager:
   (a) its name and the nature of its corporate form;
   (b) the country or territory of its incorporation;
   (c) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
   (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
   (e) the address of its registered office, its head office, and, if different, the address of its principal place of business in the United Kingdom;
   (f) the amount of its issued share capital and how much of it is paid up;
   (g) for an ICVC, a summary of the material provisions of the contract between the ICVC and the authorised fund manager which may be relevant to unitholders including provisions (if any) relating to termination, compensation on termination and indemnity;
   (h) the names of the directors of the authorised fund manager; and
   (i) a description of the duties of the authorised fund manager.

(2) Where the LTAF is an ICVC, other than for the ACD:
   (a) the names and positions in the ICVC of the directors; and
   (b) the manner, amount and calculation of the remuneration of the directors.

(3) The following particulars of the depositary
(a) its name and the nature of its corporate form;
(b) the country or territory of its incorporation;
(c) the address of its registered office and the address of its head office if that is different from the address of its registered office;
(d) if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom; and
(e) a description of the duties of the depositary.

(4) If an investment adviser or any other person is retained to provide services in connection with the business of the authorised fund:
(a) the name of the person;
(b) whether or not the person is authorised by the FCA; and
(c) a description of the duties of the person.

(5) The name of the auditor of the authorised fund and a description of the duties of the auditor.

[Note: FUND 3.2.2R(4).]

11 Professional liability
A description of how the authorised fund manager complies with the requirements referred to in IPRU-INV 11.3.11G (Professional negligence) relating to professional liability risk.

[Note: FUND 3.2.2R(5).]

12 Delegation arrangements
To the extent not covered by (10), a description of:

(1) any AIFM management function delegated by the authorised fund manager;
(2) any safe-keeping function delegated by the depositary;
(3) the identity of each delegate appointed under FUND 3.10 (Delegation); and
(4) any conflicts of interest that may arise from such delegation.

[Note: FUND 3.2.2R(6).]

13 Valuation of scheme property and due diligence

(1) A statement setting out whether the valuation function is performed by an external valuer or the authorised fund manager and:

(a) where an external valuer is used to perform the valuation function, an explanation of how that person meets the requirements set out in FUND 3.9.7R(3) (Performance of the valuation function) and the relevant requirements in articles 67 to 74 of the AIFMD level 2 regulation, and how the authorised fund manager is able to demonstrate the matters specified in FUND 3.9.9R (Appointment of an external valuer) and FUND 3.10.2R(2)(f) (General delegation requirements); or

(b) where the authorised fund manager performs the valuation function itself, details of the depositary's determination of the matters referred to in COLL 15.2.6R(2) (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets).
2 A description of the valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets, in line with FUND 3.9 (Valuation), and details as to:

(a) how frequently and at what times of the day the scheme property will be regularly valued to determine the price at which units in the scheme may be purchased from or redeemed by the authorised fund manager and a description of any circumstance where the scheme property may be specially valued;

(b) in relation to each purpose for which the scheme property must be valued and each category of asset held in the scheme property, the basis on which it will be valued, identifying any codes of good practice used by the external valuer (where relevant) or the authorised fund manager; and

(c) how the price of units of each class will be determined, including a statement that a forward price basis is to be applied.

(3) Details as to:

(a) the authorised fund manager’s policies and procedures in relation to the selection and ongoing monitoring of investments (see article 18(2) of the AIFMD level 2 regulation);

(b) the arrangements for ensuring that investment decisions on behalf of the long-term asset fund are carried out in compliance with the objectives and the investment strategy of the scheme (see article 18(3) of the AIFMD level 2 regulation);

(c) how the authorised fund manager will carry out due diligence in line with good market practice.

[Note: FUND 3.2.2R(7).]

[Note 2: Articles 67 to 71 of the AIFMD level 2 regulation contain detailed requirements relating to the valuation of assets by full-scope UK AIFMs. Articles 18 and 19 of the AIFMD level 2 regulation also contain detailed requirements relating to the due diligence obligations of full-scope UK AIFMs.]

14 Fees, charges and expenses

A description of all fees, charges and expenses, including:

(1) the maximum amounts directly or indirectly borne by investors;

(2) the payments that may be made out of the scheme property to any person whether by way of remuneration for services, reimbursement of expense, or charge or other payment and for each category of remuneration, expense, charge or payment the following should be specified:

(a) (i) the person to whom the remuneration, charge, expense or payment is payable or made;

(ii) what that payment is for;

(iii) the current rates or amounts of such remuneration, charge, expense or payment;

(iv) how the remuneration, charge, expense or payment will be calculated;

(v) when it will be paid; and
(vi) where a performance fee is taken, whether by the authorised fund manager or any other person providing services to the authorised fund manager or the long-term asset fund in relation to the operation of the scheme, examples of how the performance fee works in plain English and the maximum it can amount to;

(b) if notice has been given to unitholders of the authorised fund manager’s intention to:
   (i) introduce a new category of remuneration for its services;
   (ii) increase the basis of any current charge; or
   (iii) change the basis of the treatment of a payment from the capital property set out in COLL 15.8.16R(2) (Payments), particulars of that introduction or increase and when it will take place; and

(c) if, in accordance with COLL 15.8.16R(2) (Payments), all or part of the remuneration or expense are to be treated as a capital charge:
   (i) that fact; and
   (ii) the basis of the charge which may be so treated; and

(3) if the authorised fund manager makes any charges on sale or redemption of units, details of the charging structure and how notice will be provided to unitholders of any increase.

[Note: FUND 3.2.2R(9).]

[Note 2: Annex VI of the onshored Commission Delegated Regulation (EU) 2017/653 laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents, sets out detailed requirements in relation to the costs to be disclosed in a key information document.]

15 Fair treatment of investors and investor rights

(1) A description of how the authorised fund manager ensures a fair treatment of investors.

(2) Whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of:
   (a) that preferential treatment;
   (b) the type of investors who obtain such preferential treatment; and
   (c) where relevant, their legal or economic links with the LTAF or the authorised fund manager.

(3) A description of the rights of investors.

[Note: FUND 3.2.2R(4), FUND 3.2.2R(10) and FUND 3.2.2R(11).]

16 Dealing

The procedure and conditions for the issue, sale, redemption and cancellation of units or shares including details of the following, in fair, clear and plain language, using worked examples to explain how these procedures might apply to unitholders in practice:

(1) the dealing days and times in the dealing day on which the authorised fund manager will receive and determine requests for the sale and redemption of units, including any cut-off point for receiving redemption requests before the authorised fund man-
ager makes the next redemption determination (see COLL 15.8.12R(2)(a) (Dealing: redemption of units));

(2) the procedures for effecting the issue and cancellation of units;

(3) the procedures for effecting the sale and redemption of units and the settlement of transactions;

(4) the steps required to be taken by a unitholder in redeeming units in the long-term asset fund (see COLL 15.8.12R (Dealing: redemption of units)), using worked examples to explain how these arrangements may affect unitholders in the scheme, including:

(a) the notice period, and the normal period that unitholders will need to wait from the authorised fund manager accepting a unitholder’s instruction to redeem units in the LTAF to payment of the appropriate proceeds of redemption to the unitholder;

(b) the circumstances and periods where:

(i) the execution of a redemption request may be deferred;

(ii) payment may be deferred; or

(iii) a limit on the amount that can be redeemed may be applied, and

if so, the effect on the unitholder of such a deferral or limit (see COLL 15.8.12R(6) (Dealing: redemption of units));

(c) that the notice period may be extended when the scheme is suspended in accordance with COLL 15.10.3R (Suspension); and

(d) that once the authorised fund manager has accepted a unitholder’s request to redeem units in the LTAF it is irrevocable and they will not be able to withdraw that request;

(5) a description of the LTAF’s liquidity risk management, including how an investor’s ability to redeem units in the LTAF may be affected in exceptional circumstances, and the circumstances in which the redemption of units may be suspended;

(6) the days and times in the day on which recalculation of the price will commence;

(7) details of the minimum number or value of each type of unit in the authorised fund which:

(a) any one person may hold; and

(b) may be the subject of any one transaction of sale or redemption;

(8) the circumstances in which the authorised fund manager may arrange for, and the procedure for, a redemption of units in specie;

(9) the circumstances in which the further issue of units in any particular class may be limited and the procedures relating to this;

(10) the circumstances in which direct issue or cancellation of units by the ICVC or the depositary of an AUT or ACS (as appropriate) may occur and the relevant procedures for such issues and cancellations;

(11) whether a unitholder may effect transfer of title to units on the authority of an electronic communication and if so the conditions that must be satisfied in order to effect a transfer;

(12) if the authorised fund manager deals as principal in units of the scheme and holds them for that purpose, a statement of its policy for doing so and, where applicable:
(a) a description of when the authorised fund manager may retain any profits it earns and absorb any losses it incurs for these activities; and
(b) a statement of non-accountability as referred to in COLL 15.8.17G; and
(13) any other features relating to dealing in units in the scheme which unitholders would reasonably expect to be aware of, including (but not limited to):
(a) any minimum periods for which unitholders must hold units in any class of the scheme;
(b) any limits or caps on the number or value of units in any class that a unitholder may redeem, whether on one occasion or over a period of time;
(c) whether the scheme may use side-pockets, and if so the procedures for their use,
using worked examples to explain the effects or consequences that these features may have on unitholders in the scheme.

[Note: FUND 3.2.2R(8).]

17 Issue of units in ACSs: eligible investors
(1) A statement that units may not be issued to a person other than to a person:
(a) who is a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme; and
(b) to whom units in a long-term asset fund may be promoted under COBS 4.12.4R.

(2) A statement that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (1).

[Note: FUND 3.2.2R(12).]

18 Transfer of units in ACSs
(1) A statement whether the transfer of units in the ACS scheme is either:
   (a) prohibited; or
   (b) allowed;
by the instrument constituting the fund and prospectus.

(2) A statement that where transfer of units is allowed by the instrument constituting the fund and prospectus in accordance with (1)(b), units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person:
   (a) who is a:
      (i) professional ACS investor; or
      (ii) large ACS investor; or
      (iii) person who already holds units in the scheme; and
   (b) to whom units in a long-term asset fund may be promoted under COBS 4.12.4R.
(3) For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.

[Note: FUND 3.2.2R(12).]

19 Prime brokerage firms

(1) The identity of any prime brokerage firm.

(2) A description of any material arrangements of the LTAF with its prime brokerage firm and the way any conflicts of interest are managed.

(3) The provision in the contract with the depositary on the possibility of transfer and reuse of the scheme property of the LTAF.

(4) Information about any transfer of liability to the prime brokerage firm that may exist.

[Note: FUND 3.2.2R(16).]

20 Distributions and accounting dates

Relevant details of accounting and distribution dates and a description of the procedures:

(1) for determining and applying income (including how any distributable income is paid); and

(2) relating to unclaimed distributions.

21 The register of unitholders

Details of the address in the United Kingdom where the register of unitholders is kept and can be inspected by unitholders.

22 Property Authorised Investment Funds

For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the scheme; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the scheme, the authorised fund manager is entitled to delay any redemption or cancellation of units if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

23 General information

Details as to:

(1) when annual and half-yearly reports will be published; and

(2) the address at which copies of the instrument constituting the fund, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

24 Winding up of the LTAF

Information detailing the circumstances in which the authorised fund may be wound up under the rules in COLL and a summary of the procedure for, and the rights of unitholders under, such a winding up.

25 Information on the umbrella
In the case of a scheme which is an umbrella, the following information:

1. that a unitholder may exchange units in one sub-fund for units in another sub-fund and that such an exchange is treated as a redemption and sale;
2. what charges may be made on exchanging units in one sub-fund for units in other sub-funds;
3. the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;
4. in respect of each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the umbrella;
5. the circumstances in which a sub-fund may be terminated under the rules in COLL and a summary of the procedures for, and the rights of unitholders under, such a termination;
6. for an ICVC or a co-ownership scheme, that:
   a. for an ICVC, its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;
   b. for a co-ownership scheme, the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund; and
   c. for an ICVC or a co-ownership scheme, while the provisions of the OEIC Regulations, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the Act in the case of co-ownership schemes, provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations or, as the case may be, section 261P of the Act; and
7. the FCA product reference number (PRN) of each sub-fund.

26 Application of the prospectus contents to an umbrella

For a scheme which is an umbrella, information required must be stated:

1. in relation to each sub-fund where the information for any sub-fund differs from that for any other; and
2. for the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.

27 Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement:
(1) disclosing the existence of that intermediate holding vehicle or series of intermediate holding vehicles; and
(2) confirming that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles is to enable the holding of overseas immovables by the scheme.

28 Information on authorised contractual schemes
A statement that:
(1) a unitholder in a co-ownership scheme is not liable to make any further payment after having paid the price of the units held and that no further liability can be imposed on the unitholder in respect of those units;
(2) a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;
(3) the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business; and
(4) the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants).

29 Additional information
Any other material information which is within the knowledge of the directors of an ICVC or the authorised fund manager of an AUT or ACS, or which the directors or authorised fund manager would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by participating.

Additional information to be made available on securities financing transactions and total return swaps

15.4.6 1 The Securities Financing Transactions Regulation sets out the additional information which an authorised fund manager of a long-term asset fund must make available to investors before they invest.

■ COLL 4.2.5BUK and ■ COLL 4.2.5CUK copy out the relevant provisions of that regulation.

An authorised fund manager of a long-term asset fund should publish the information in the prospectus.

An authorised fund manager of a long-term asset fund that does not use securities financing transactions or total return swaps is not required to include the information in ■ COLL 4.2.5CUK in the prospectus or other pre-sale documents.
Preparation of key information document in accordance with the PRIIPs regulation

15.4.7

(1) The PRIIPs Regulation requires the manufacturer of a PRIIP to draw up a key information document in accordance with the PRIIPs Regulation before that PRIIP is made available to retail investors (as defined in the PRIIPs Regulation).

(2) The requirements of the PRIIPs Regulation form part of UK law by virtue of the EUWA.

(3) As a result, when a long-term asset fund is made available to retail clients, the authorised fund manager in the United Kingdom must comply with the PRIIPs Regulation and will need to prepare a key information document in accordance with the PRIIPs Regulation, in addition to the prospectus.
15.5 Annual report and investor relations

Application

15.5.1 This section applies to:

(1) the authorised fund manager of an AUT, ACS or an ICVC; and
(2) an ICVC, which is a long-term asset fund.

Report and accounts

15.5.2 (1) The authorised fund manager must prepare a report in respect of each annual accounting period, half-yearly accounting period and quarterly reporting period.

(2) Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

(3) The authorised fund manager must:

   (a) publish the annual report not more than four months after the end of each relevant annual accounting period;
   (b) publish the half-yearly report not more than two months after the end of each relevant half-yearly accounting period; and
   (c) publish the quarterly report not more than 20 business days after the end of each relevant quarterly reporting period,

   and in each case provide a copy free of charge on request to any unitholder.

(4) The authorised fund manager must provide free of charge, on the request of any person eligible to invest in the scheme, a copy of the latest:

   (a) annual report and (if more recent) half-yearly report; and
   (b) quarterly report,

   before the conclusion of any sale to such a person.

(5) The authorised fund manager must provide a copy of each annual, half-yearly and quarterly report to the FCA.

(6) For a scheme which is an umbrella, any annual report provided under (3) or (4) may be a report prepared under COLL 15.5.3R(3), but the
authorised fund manager must nevertheless provide free of charge the report prepared under COLL 15.5.3R(2) if a unitholder or any other person eligible to invest in the scheme requests it.

Contents of the annual report

(1) An annual report, other than for a scheme which is an umbrella, must contain:

(a) the accounts for the annual accounting period prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 15.5.6R (Authorised fund manager’s report);

(c) comparative information in accordance with COLL 4.5.10R (1A) and (2A) (Comparative information);

(d) the report of the depositary in accordance with COLL 15.5.7R (Report of the depositary);

(e) the report of the auditor in accordance with COLL 4.5.12R (Report of the auditor); and

(f) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to where the report’s location on the firm’s website, in accordance with ESG 2.3.1R.

(2) An annual report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund:

(i) the accounts required by (1)(a);

(ii) the report of the authorised fund manager in accordance with COLL 15.5.6R;

(iii) comparative information in accordance with COLL 4.5.10R(1A) and (2A); and

(iv) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on firm’s website, in accordance with ESG 2.3.1R;

(b) the report of the depositary in accordance with COLL 15.5.7R; and

(c) the report of the auditor in accordance with COLL 4.5.12R.

(3) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further annual report for any one or more individual sub-funds of the umbrella, in which case it must contain:

(a) for the sub-fund:

(i) the accounts required by (1)(a);

(ii) the report of the authorised fund manager in accordance with COLL 15.5.6R; and

(iii) comparative information in accordance with COLL 4.5.10R(1A) and (2A);
(b) the report of the depositary in accordance with COLL 15.5.7R; and

the report of the auditor in accordance with COLL 4.5.12R.

(4) The directors of an ICVC or the authorised fund manager of an AUT or ACS must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund or sub-fund for the relevant annual accounting period, and of the financial position of the authorised fund or sub-fund as at the end of that period.

(5) An annual report of a long-term asset fund must also contain a statement setting out a description of the assessment of value required by COLL 15.7.17R including:

(a) a separate discussion and conclusion for the matters covered in each paragraph of COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;

(b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to unitholders;

(c) an explanation for any case in which unitholders hold units in a class for which the payments out of scheme property in relation to that class as set out in the prospectus (in this rule, “charges”) are higher than those applying to other classes of the same scheme with substantially similar rights;

(d) the conclusion of the authorised fund manager’s assessment of whether the charges are justified in the context of the overall value delivered to the unitholders in the scheme; and

(e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the unitholders, a clear explanation of what action has been or will be taken to address the situation.

(6) An annual report of a long-term asset fund must also contain a statement setting out a description of the assessment required by COLL 15.7.20R (Assessment of investment valuations, due diligence, conflicts of interest and liquidity management), including:

(a) a separate discussion and conclusion for each of the matters specified in COLL 15.7.21R (Table: minimum considerations – assessment of investment valuations, due diligence, conflicts of interest and liquidity management) and for each other matter that formed part of the assessment;

(b) a summary of the assessment’s findings and the steps undertaken as part of or as a consequence of the assessment; and

(c) the conclusion of the authorised fund manager’s assessment of how it managed the LTAF in the best interests of the scheme, its investors and the integrity of the market.
Information to be included in annual reports on securities financing transactions and total return swaps

15.5.4 (1) The Securities Financing Transactions Regulation sets out the additional information which an authorised fund manager who is a full-scope UK AIFM of a long-term asset fund must include in the scheme’s annual report.

(2) COLL 4.5.8ABUK and COLL 4.5.8ACUK copy out the relevant provisions of that regulation.

(3) An authorised fund manager of a long-term asset fund that has not used securities financing transactions or total return swaps during the relevant annual accounting period is not required to include the information in COLL 4.5.8ACUK in its reports.

Contents of the half-yearly report

15.5.5 (1) A half-yearly report on an authorised fund or sub-fund must contain:

(a) the accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 15.5.6R; and

(c) its public TCFD product report or an adequately contextualised and prominent cross-reference and hyperlink to the report’s location on the firm’s website, in accordance with ESG 2.3.1R, where the half-yearly report most closely follows the reporting deadline of 30 June, under ESG 2.1.1R(1).

(2) For a scheme which is an umbrella, the authorised fund manager may choose whether the half-yearly report is prepared for the umbrella as a whole, or for each individual sub-fund, or both.

Authorised fund manager’s report

15.5.6 The report of the authorised fund manager must include:

(1) a review of the investment activities during the period to which the report relates;

(2) a portfolio statement prepared in accordance with the requirements of the IMA SORP;

(3) in the case of an umbrella which has more than one sub-fund, particulars in the form of a table showing, as at the end of the period to which the report relates:

(a) for each sub-fund, the number of units in that sub-fund that were held by a second sub-fund of that umbrella; and

(b) the value of each such holding;

or, alternatively, a statement that there were no such holdings as at the end of that period;

(4) particulars of any fundamental or significant change to the authorised fund made since the date of the last report;
(5) in relation to each scheme or sub-fund which is a long-term asset fund:

(a) the amount of any remuneration, charge, payment or expense paid out of the scheme property during the period to which the report relates;

(b) the person to whom that amount was paid;

(c) what that remuneration, charge, payment or expense was for; and

(d) how the remuneration, charge, payment or expense was calculated; and

(6) any other information which would enable unitholders to make an informed judgement on the development of the activities of the authorised fund during the period and the results of those activities as at the end of the period.

Report of the depositary

15.5.7 R

(1) The depositary must make an annual report to unitholders which must be included in the annual report.

(2) The depositary’s report must contain:

(a) a description, which may be in summary form, of the duties of the depositary under COLL 15.7.6R and COLL 15.7.7R (Duties of the depositary) and in respect of the safekeeping of the scheme property;

(b) in relation to its oversight and monitoring obligations:

(i) a description of the reasonable steps the depositary has taken to ensure that the LTAF has been managed in accordance with each of the matters specified in COLL 15.7.6R(2)(e) (Duties of the depositary); and

(ii) where an external valuer has not been appointed, a statement setting out the depositary’s determination of the matters in COLL 15.2.6R(2) (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets); and

(c) a statement as to whether in any material respect:

(i) the issue, sale, redemption and cancellation and calculation of the price of the units and the application of the authorised fund’s revenue, have not been carried out in accordance with the rules in this sourcebook and, where applicable, the OEIC Regulations and the instrument constituting the fund; and

(ii) the investment and borrowing powers and restrictions applicable to the authorised fund have been exceeded.

Signing of the annual and half-yearly reports

15.5.8 R

The annual reports in COLL 15.5.3R(1) and (2) and the half-yearly reports in COLL 15.5.5R(1) must:
(1) in the case of an ICVC, if there is:
   (a) more than one director, be approved by the board of directors and signed on their behalf by the ACD and at least one other director; or
   (b) no director other than the ACD, be signed by the ACD;

(2) in the case of an AUT or ACS, if the authorised fund manager has:
   (a) more than one director, be signed by at least two directors of the authorised fund manager; or
   (b) only one director, be signed by the director of the authorised fund manager.

Quarterly reports

(1) A quarterly report must contain details of any transactions executed by, or for or on behalf of, the long-term asset fund in the relevant quarterly reporting period which have resulted in assets being held in the LTAF’s scheme property, including:
   (a) the date of each transaction;
   (b) details of the asset and type of asset which was the subject of the transaction; and
   (c) an explanation of how the transaction is consistent with the LTAF’s investment objectives, investment policy and investment strategy.

(2) A quarterly reporting period for a long-term asset fund must be determined in accordance with (a) to (c).
   (a) Each quarterly reporting period must be three months long.
   (b) There must be four consecutive quarterly reporting periods in each annual accounting period.
   (c) The first quarterly reporting period in each annual accounting period must begin when the annual accounting period begins.

Alterations to the scheme and notices to unitholders

(1) Any proposed change which would be reasonably considered to be a fundamental change to the scheme requires the prior sanction of an extraordinary resolution of the unitholders.

(2) Any proposed change to the scheme which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to unitholders to become effective.

(3) Alterations affecting only a particular sub-fund or class of units may be approved in accordance with (1) or (2) for the particular sub-fund or class of units, with the consent of, or, as the case may be, notice to, the relevant unitholders.

(4) This rule and COLL 15.5.12R (Meetings) will apply (unless the context requires otherwise) to alterations concerning unitholders of a particular sub-fund or class of units rather than the scheme or sub-fund as a whole.
Alterations to the scheme and notices to unitholders: guidance

Although account should be taken of the guidance on fundamental changes (COLL 4.3.5G (Guidance on fundamental changes)) and significant changes (COLL 4.3.7G (Guidance on significant changes)) the impact of any change to the scheme should be assessed individually based on the nature of the scheme and its investor profile.

Meetings

(1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the instrument constituting the fund and be reasonable and fair as between all relevant parties.

(2) The authorised fund manager must record and keep minutes for six years of all proceedings to which COLL 15.5.10R (Alterations to the scheme and notices to unitholders) and this rule are relevant.

(3) The provisions in COLL 4.4.12R (Notices to unitholders), COLL 4.4.13R (Other notices) and COLL 4.4.14G (References to writing and electronic documents) apply in relation to long-term asset funds.
15.6 Investment and borrowing powers

Application

15.6.1
This section applies to:

1) the authorized fund manager of an AUT, ACS or an ICVC;
2) the depositary of an AUT, ACS or an ICVC; and
3) an ICVC, which is a long-term asset fund.

15.6.2
(1) Where this section refers to a second scheme, and the second scheme is a feeder scheme, which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, the reference in this section to the second scheme must be read as if it were a reference to the feeder scheme’s master scheme.

(2) Where this section refers to a second scheme, and the second scheme is a master scheme to which (in respect of investment in units in collective investment schemes) the relevant long-term asset fund is dedicated, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which that master scheme invests.

Prudent spread of risk

15.6.3
An authorised fund manager must ensure that, taking account of the investment objectives, policy and strategy of the long-term asset fund as stated in its most recently published prospectus, the scheme property of the long-term asset fund aims to provide a prudent spread of risk.

15.6.4
For the purpose of 15.6.3, an authorised fund manager should consider the risks to which the LTAF is exposed, including:

1) whether the assets or investments held in the scheme property provide a sufficient diversification of exposure including, for example, in respect of the underlying assets or investments held by any holding company or other collective investment scheme;
(2) the spread of any other risks arising from the assets or investments held in the scheme property of the LTAF such as market risks, credit risks, liquidity risks and counterparty risks.

[Note: Article 44 of the AIFMD level 2 regulation.]

Investment powers: general

15.6.5 (1) The scheme property of a long-term asset fund may, subject to the rules in this chapter, comprise any assets or investments to which it is dedicated.

(2) The instrument constituting the fund and the prospectus may further restrict:

(a) the kinds of assets in which the scheme property may be invested;

(b) the types of transactions permitted and any relevant limits; and

(c) the borrowing powers of the scheme.

Long-term asset funds: investment strategy

15.6.6 The investment strategy of a long-term asset fund must be to invest mainly in long-term illiquid assets.

15.6.7 The FCA expects the investment strategy of a long-term asset fund to be to invest at least 50% of the value of the scheme property in unlisted securities and other long-term assets such as interests in immovables or other collective investment schemes investing in such securities or long-term assets. However, a long-term asset fund could have a strategy of investing mainly in a mix of unlisted assets and listed but illiquid assets.

Long-term asset funds: general

15.6.8 The scheme property of a long-term asset fund must, except where otherwise provided by the rules in this chapter, consist only of one or more of the following to which it is dedicated:

(1) any specified investment:

(a) within articles 74 to 86 of the Regulated Activities Order;

(b) within article 89 (Rights to or interests in investments) of the Regulated Activities Order where the right or interest relates to a specified investment within (a);

(2) (to the extent not within (a)), an interest in a loan, provided that the loan was not originated to:

(a) a natural person;

(b) the authorised fund manager of the long-term asset fund;

(c) the depositary of the long-term asset fund;

(d) an affiliated company of the person in (b) or (c); or

(e) a person who intends to use, or uses, the credit for the purpose of investing in a derivative, cryptoasset derivative, an unregulated
transferable cryptoasset, precious metals or a commodity contract within (5);

(3) an interest in an immovable under [COLL 15.6.18R (Investment in property);

(4) precious metals; or

(5) a commodity contract traded on an RIE or a recognised overseas investment exchange.

[Note: Full-scope UK AIFMs are subject to specific requirements relating to conflicts of interest (see articles 30 to 36 in the AIFMD level 2 regulation and [SYSC 10.1.23R to SYSC 10.1.26R (Additional requirements for an AIFM)].]

[Note 2: In relation to (2), a borrower who receives money by way of deposit from a person who is not a bank may (if the borrower is acting by way of business) be carrying on the regulated activity of accepting deposits, but an exclusion in the Regulated Activities Order may be available. See also article 2 of the Business Order.]

Investment in collective investment schemes

15.6.9 R

(1) Subject to (2), a long-term asset fund may invest in units in a scheme (a ‘second scheme’) only if the second scheme is:

(a) a regulated collective investment scheme; or

(b) a scheme not within (a) where the authorised fund manager has taken reasonable care to determine that:

(i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;

(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function; and

(iii) it (and any master scheme to whose units it is dedicated) is prohibited from investing in the long-term asset fund, or, if there is no such prohibition, the authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made by either the second scheme or any fund in which the second scheme invests.

(2) A long-term asset fund must not invest more than 20% in value of the scheme property in units in second schemes which are unregulated schemes, qualified investor schemes or long-term asset funds unless the authorised fund manager has carried out appropriate due diligence on each of the second schemes and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second scheme complies with relevant legal and regulatory requirements.

(3) The authorised fund manager of a long-term asset fund with more than 20% in value of the scheme property invested in one or more second schemes which are unregulated schemes, qualified investor schemes or long-term asset funds must carry out appropriate due diligence on those schemes on an ongoing basis.
15.6.10  
(1) The authorised fund manager of a long-term asset fund carrying out due diligence for the purpose of COLL 15.6.9R should use reasonable efforts to make enquiries and obtain the information needed to be able to consider the matters specified in COLL 5.7.11G(1) to (12), as if that guidance related to COLL 15.6.9R.

(2) Where COLL 5.7.11G(10) refers to COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to COLL 15.8.2R (Valuation, pricing and dealing).

(3) In addition to the guidance at COLL 5.7.11G the authorised fund manager should, as part of its due diligence process, consider whether the property of each of the second schemes is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second scheme and, if not, what controls over the property of the second scheme are in place to protect investors.

(4) Further specific requirements relating to due diligence apply to the authorised fund manager of a long-term asset fund under the rules in this chapter and in articles 18 to 20 of the AIFMD level 2 regulation.

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15.6.11  
Where the second scheme in COLL 15.6.9R is an umbrella, the provisions apply to each sub-fund as if it were a separate scheme.

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15.6.12  
(1) An authorised fund manager must take reasonable care to determine the following when entering into any transaction in derivatives or any commodity contract which may result in any asset becoming part of the scheme property:

(a) if it is an asset in which the scheme property could be invested, that the transaction:

(i) can be readily closed out; or

(ii) would at the expected time of delivery relate to an asset which could be included in the scheme property under the rules in this chapter; or

(b) in any other case, that the transaction can be readily closed out.

(2) An authorised fund manager may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the unitholders, provided it has the consent of the depositary.

(3) Any asset within (1) acquired in accordance with (2) may form part of the scheme property despite any other rule in this chapter until the position can be rectified.
Cover for transactions in derivatives and forward transactions

15.6.13  A transaction in derivatives or a forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2).

(2) Exposure is globally covered if adequate cover from within the scheme property is available to meet the scheme’s total exposure taking into account any reasonably foreseeable market movement.

(3) The total exposure relating to derivatives held in a long-term asset fund may not exceed the net value of the scheme property.

(4) No element of cover may be used more than once.

Valuation of an OTC derivative

15.6.14  A transaction in an OTC derivative must be capable of valuation which it will only be if the authorised fund manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy:

(1) on the basis of the pricing model; or

(2) on some other reliable basis reflecting an up-to-date market value, which has been agreed between the authorised fund manager and the depositary.

Continuing nature of limits and requirements

15.6.15  An authorised fund manager must, as frequently as necessary to ensure compliance with ■ COLL 15.6.13R(2) and ■ COLL 15.6.13R(4), recalculate the amount of cover required in respect of derivatives and forward transactions in existence under this chapter.

(2) Derivatives and forward transactions may be retained in the scheme property only so long as they remain covered globally under ■ COLL 15.6.13R.

(3) An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme’s derivatives positions and their contribution to the overall risk profile of the scheme.

Permitted stock lending

15.6.16  The ICVC, or the depositary at the request of the ICVC, or the depositary of an AUT or ACS at the request of the authorised fund manager, may enter into a repo contract or a stock lending arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).
(2) The depositary must ensure that the value of any collateral for the stock lending arrangement is at all times at least equal to the value of the securities transferred by the depositary.

(3) In the case of the expiry of validity of any collateral, the duty in (2) is satisfied if the depositary or the authorised fund manager, as appropriate, takes reasonable care to determine that sufficient collateral will be transferred by close of business on the day of expiry.

General power to borrow

15.6.17  R

(1) The ICVC or depositary of an AUT or ACS (on the instructions of the authorised fund manager) may borrow money for the use of the authorised fund on terms that the borrowing is to be repayable out of the scheme property.

(2) The authorised fund manager must ensure that the authorised fund’s borrowing does not, on any day, exceed 30% of the net value of the scheme property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.

(3) In this rule “borrowing” also includes any arrangement (including a combination of derivatives) designed to achieve a temporary injection of money into the scheme property in the expectation that the sum will be repaid.

(4) Where the limit in (2) is breached, the authorised fund manager must take action in accordance with the principles set out in COLL 15.7.3R(3) to COLL 15.7.3R(5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

Investment in property

15.6.18  R

(1) Any investment in land or a building held within the scheme property of a long-term asset fund must be in an immovable within (2).

(2) For an immovable:

   (a) it must be situated in a country or territory identified in the prospectus;

   (b) the authorised fund manager must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and

   (c) the authorised fund manager of an AUT or ACS or the ICVC must have received a report from an appropriate valuer that:

      (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and

      (ii) states that in the appropriate valuer’s opinion the interest in the immovable would, if acquired by the scheme, be capable of being disposed of at that valuation in a timeframe which is consistent with the LTAF’s liquidity profile and redemption policy;
(d) unless (c) is satisfied, the authorised fund manager of an AUT or ACS or the ICVC must have received a report from an appropriate valuer valuing the interest in the immovable and stating that:

(i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property; and

(ii) in the opinion of the appropriate valuer, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and

(2) it must not be bought:

(e) if it becomes apparent to the authorised fund manager that the report in either (c) or (d) could no longer reasonably be relied upon; or

(e) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).

(3) Any contents of any building may be regarded as part of the relevant immovable.

(4) An appropriate valuer must be a person who:

(a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;

(b) is qualified to be a standing independent valuer of an authorised fund or is considered by the scheme’s standing independent valuer to hold an equivalent qualification;

(c) is independent of the ICVC, the depositary and each of the directors of the ICVC or of the authorised fund manager and depositary of the AUT or ACS; and

(d) has not been engaged, and whose associates have not been engaged, in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

**Investment in overseas property through an intermediate holding vehicle**

15.6.19

(1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.
(1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle’s* reasonable running costs (including tax).

(2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the *scheme’s* investment objectives and policy.

(3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.

(4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.

(5) The *authorised fund manager* should provide sufficient information to enable the *depositary* to fulfil its duties under COLL in relation to the immovables held through an *intermediate holding vehicle*.

### Investment limits for immovables

(1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under ■ COLL 15.6.18R(2)(c) or ■ COLL 15.6.18R(2)(d) or ■ COLL 15.6.22R, as appropriate;

(2) no option may be granted to a person to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide redemption; and

(3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme value* in any 12-month period, calculated at the date of the granting of the option.

### Standing independent valuer and valuation

(1) In relation to the appointment of a valuer the *authorised fund manager* must:

(a) at the outset appoint the *standing independent valuer* with the approval of the *depositary* and likewise upon any vacancy; and

(b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer* (*standing independent valuer*) appointed by the *authorised fund manager*. 
(2) The following apply in relation to the functions of the standing independent valuer:

(a) the authorised fund manager must ensure that the standing independent valuer appointed under (1), procures the valuation of all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;

(b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;

(c) the authorised fund manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;

(d) if either the authorised fund manager or the depositary becomes aware of any matter which appears likely to:
   (i) affect the outcome of a valuation of an immovable; or
   (ii) cause the valuer to decide to value under (a), instead of under (c),

   it must immediately inform the standing independent valuer of that matter;

(e) the authorised fund manager must use its best endeavours to ensure that any other affected person reports to the standing independent valuer immediately upon that person becoming aware of any matter within (d); and

(f) any valuation by the standing independent valuer must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA 2 of the RICS Valuation – Global Standards 2017 UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to any provisions of the instrument constituting the fund.

(3) In relation to immovables:

(a) any valuation under this rule has effect, until the next valuation under this rule, for the purposes of the value of immovables; and

(b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it reasonably appears to the authorised fund manager to be legally enforceable.

15.6.23 In considering whether a valuation of overseas immovables by the standing independent valuer is made on an appropriate basis for the purpose of COLL 15.6.22R(2)(f), the authorised fund manager should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Council.
15.7 Powers and responsibilities of the authorised fund manager and the depositary

Application

This section applies to:

1. an authorised fund manager of an AUT, ACS or an ICVC;
2. any other director of an ICVC;
3. the depositary of an AUT, ACS or an ICVC; and
4. an ICVC, which is a long-term asset fund.

Functions of the authorised fund manager

1. The authorised fund manager must manage the scheme in accordance with:
   a. the instrument constituting the fund;
   b. the applicable rules;
   c. the most recently published prospectus; and
   d. for an ICVC, the OEIC Regulations.

2. The authorised fund manager must carry out such functions as are necessary to ensure compliance with the rules that impose obligations on the authorised fund manager or ICVC, as appropriate.

3. The authorised fund manager must:
   a. make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
   b. instruct the depositary how rights attaching to the ownership of scheme property are to be exercised;
   c. take action immediately to rectify any breach of the pricing methodology set out in the prospectus, which must (unless the authorised fund manager determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
(i) by the **authorised fund manager** to unitholders and former unitholders;

(ii) by the ACD to the ICVC;

(iii) by the ICVC to the ACD;

(iv) by the **authorised fund manager** of the AUT or ACS to the depositary; or

(v) by the depositary (for the account of the AUT or ACS) to the **authorised fund manager**;

(d) ensure where relevant that the ICVC complies with the relevant obligations imposed by, and when appropriate exercises the relevant powers provided under, the **OEIC Regulations**;

(e) maintain such records as are necessary to enable the **authorised fund manager** or the ICVC, as appropriate, to comply with and demonstrate compliance with the rules in this sourcebook and also in the case of an ICVC, the OEIC Regulations; and

(f) maintain for a period of six years a daily record of the units held, acquired or disposed of by the **authorised fund manager** including the classes of such units, and of the balance of any acquisitions and disposals.

**Duties of the authorised fund manager: investment and borrowing powers**

15.7.3 R

(1) An **authorised fund manager** may give instructions to deal in the scheme property.

(2) An **authorised fund manager** must avoid the scheme property being used or invested contrary to any provision in **COLL 15.6** (Investment and borrowing powers).

(3) An **authorised fund manager** must immediately on becoming aware of any breach of **COLL 15.6** take action, at its own expense, to rectify that breach.

(4) An **authorised fund manager** must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

(5) An **authorised fund manager** must not postpone taking action in accordance with (3) unless the depositary has given its consent.

**Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes**

15.7.4 R

Where reasonable grounds exist for an ACD of an ICVC, or an **authorised contractual scheme manager** of a co-ownership scheme which is an umbrella, to consider that a foreign law contract entered into by the ICVC or **authorised contractual scheme manager** on behalf of the co-ownership scheme may have become inconsistent with the principle of limited recourse stated in the instrument constituting the fund of the ICVC or co-ownership scheme (see **COLL 15.3.6R(3)(5)** and **COLL 15.3.6R(3)(6)**), the ACD or **authorised contractual scheme manager** of the co-ownership scheme must:
(1) promptly investigate whether there is an inconsistency; and 

(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

15.7.5 In deciding what steps are appropriate to remedy the inconsistency, the ACD or authorised contractual scheme manager of the co-ownership scheme should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

(1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or

(2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

**Duties of the depositary**

15.7.6 (1) The depositary is responsible for the safekeeping of all the scheme property.

(2) The depositary must:

(a) take all steps to ensure that transactions properly entered into for the account of the scheme are completed;

(b) take all steps to ensure that instructions properly given by the authorised fund manager in respect of the exercise of rights related to scheme property are carried out;

(c) ensure that any resulting benefit of a derivatives or forward transaction is received by itself in respect of the scheme;

(d) hold and deal with any income received in respect of the scheme property in accordance with COLL 15.8.18R (Income);

(e) take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with:

   (i) the investment objectives, policy and strategy set out in the LTAF’s most recent prospectus;

   (ii) COLL 15.6 (Investment and borrowing powers);

   (iii) COLL 15.8.2R (Valuation, pricing and dealing);

   (iv) COLL 15.8.18 (Income); and

   (v) any provision of the instrument constituting the fund or the prospectus that relates to the provisions in (ii) to (iv);

(f) where applicable, comply with its obligations under COLL 15.2.6R (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets);

(g) keep records so as to comply with the rules in this sourcebook and so as to demonstrate such compliance; and

(h) be responsible for any other duties as set out in the instrument constituting the fund.
(3) If a relevant ICVC ceases to have any directors, the depositary may act in accordance with COLL 6.5.6R (ICVC without a director).

(4) This rule applies to the depositary of a long-term asset fund 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 applies to the depositary of a long-term asset fund because an LTAF must be managed by a full-scope UK AIFM.]

15.7.7 The depositary must also:

(1) ensure that any scheme property in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate; and

(2) take into its custody or control all documents of title of the scheme property other than in respect of derivatives or forward transactions.

Delegation

15.7.8 (1) The delegation of AIFM management functions by a full-scope UK AIFM is subject to the rules in FUND 3.10 (Delegation) and articles 75 to 82 of the AIFMD level 2 regulation. See also regulation 26 of the AIFMD UK regulation.

(2) The authorised fund manager of a long-term asset fund is required to possess the knowledge, skills and experience necessary to understand the activities of the LTAF and, in particular, the risks involved in those activities and the assets which the LTAF holds (or is to hold) in the scheme property. The authorised fund manager cannot rely on a delegation arrangement to satisfy this requirement (see COLL 15.2.4R (Competence and resources of the authorised fund manager)).

15.7.9 (1) This paragraph applies where the authorised fund manager delegates portfolio management of particular assets to a third party under FUND 3.10 (Delegation).

(2) Where (1) applies, the authorised fund manager will need to retain adequate risk management systems to identify, measure and monitor the risks relevant to the long-term asset fund’s investment strategy in accordance with the requirements in FUND 3.7 (Risk management) and the applicable requirements of the AIFMD level 2 regulation.

[Note: See FUND 3.7 (Risk management) and articles 38 to 47 of the AIFMD level 2 regulation.]

Delegation and responsibility for regulatory obligations

15.7.10 (1) The authorised fund manager of an LTAF should note (and will need to comply with) article 75 of the AIFMD level 2 regulation. This provides that when delegating the task of carrying out one or more functions on its behalf, an AIFM must comply with various general
principles, including the principle that the delegation structure does not allow for the circumvention of the AIFM's responsibilities or liability, and that the obligations of the AIFM towards the AIF and its investors are not altered as a result of the delegation.

(2) Directors of an ICVC and depositaries should also have regard to SYSC 8 (Outsourcing). SYSC 8.1.6R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

15.7.11 R

(1) The authorised fund manager and the depositary must ensure that any transaction in respect of the scheme property undertaken with an affected person is on terms at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm’s length with an independent third party.

(2) Paragraph (1) is subject to any provision in the instrument constituting the fund and the prospectus imposing a prohibition in relation to any type of transaction.

[Note: See articles 30 to 36 of the AIFMD level 2 regulation.]

The register of unitholders: AUTs or ACSs

15.7.12 R

(1) The authorised fund manager or the depositary of an AUT or ACS (in accordance with their responsibilities as set out in the instrument constituting the fund) must maintain a register of unitholders as a document in accordance with this rule.

(2) The register must contain:
   (a) the name and address of each unitholder (for joint unitholders no more than four need to be registered);
   (b) the number of units (including fractions of a unit) of each class held by each unitholder; and
   (c) the date on which the unitholder was registered in the register for those units.

(3) The authorised fund manager or the depositary of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the register is kept complete and up to date.

(4) Where relevant, the authorised fund manager must immediately notify the depositary of an AUT or ACS of any information it receives which may affect the accuracy of any entry in the register.

(5) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager is not entered in the register as the new unitholder.
Valuation of investments – good market practice

15.7.13 R Subject to any legal requirements which apply to the valuation of investments held or to be held in the scheme property of a long-term asset fund, the authorised fund manager of a long-term asset fund which carries on the valuation function itself must follow good market practice to value the investments held or to be held in the scheme property.

[Note: See ▪ FUND 3.9 (Valuation) and articles 67 to 71 of the AIFMD level 2 regulation.]

Due diligence – good market practice

15.7.14 R Subject to any applicable legal requirements, the authorised fund manager of a long-term asset fund must use good market practice to:

1. establish, implement and apply written policies and procedures on due diligence; and
2. implement effective arrangements for ensuring that investment decisions on behalf of the long-term asset fund are carried out in compliance with the objectives, investment strategy and, where applicable, the risk limits of the scheme.

[Note: See articles 18 to 20 of the AIFMD level 2 regulation.]

15.7.15 G The authorised fund manager may use an appropriate code of good market practice for the purposes of conducting due diligence on investments held or to be held in the scheme property.

Assessment of value

15.7.17 R (1) An authorised fund manager must conduct an assessment at least annually for each scheme it manages of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders.

(2) In carrying out the assessment required by (1), the AFM must, separately for each class of units in a scheme, consider at least the matters set out in ▪ COLL 6.6.21R (Table: minimum considerations – assessment of value).

15.7.18 G The guidance in ▪ COLL 6.22G applies to interpreting the requirements of ▪ COLL 6.21R as applied by ▪ COLL 15.7.17R.

15.7.19 R Failure by an AFM to take sufficient steps to address any instance where a scheme’s charges are not justified in the context of the overall value...
Assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.20

1 An authorised fund manager of a long-term asset fund must conduct an assessment at least annually of how it has managed the LTAF in the best interests of the LTAF, the LTAF’s investors and the integrity of the market (see COBS 2.1.4R (AIFMs’ best interests rules)).

2 In carrying out the assessment required by (1), the authorised fund manager must consider at least the matters set out in COLL 15.7.21R (Table: minimum considerations – valuation of investments, due diligence, conflicts of interest and liquidity management assessment).

Table: minimum considerations – assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.21

This table belongs to COLL 15.7.20R.

1 Valuation of investments

(1) Where the authorised fund manager performs the valuation function itself:

(a) how the methodologies maintained by the authorised fund manager to value the LTAF’s investments represent good market practice;

(b) where a methodology maintained by the authorised fund manager was changed or modified in relation to the valuation of a particular investment, the rationale for that change;

(c) the rationale for any material change to the valuation of an investment held in the scheme property during the relevant period; and

(d) the consistency of valuation of the LTAF’s investments with those of the other AIFs managed by the authorised fund manager.

(2) Where an external valuer has been appointed, the authorised fund manager’s assessment during the relevant period of how:

(a) the external valuer satisfied FUND 3.9.7R(3) (Performance of the valuation function);

(b) the authorised fund manager was satisfied that it could demonstrate the matters specified in FUND 3.9.9R (Appointment of an external valuer); and

(c) the authorised fund manager was satisfied that it could demonstrate the matters specified in FUND 3.10.2R(2)(f) (General delegation requirements).

2 Due diligence

In relation to due diligence carried out on investments, how that due diligence was carried out in accordance with good market practice (see COLL 15.7.14R (Due diligence – good market practice)).

3 Conflicts of interest

In relation to conflicts of interest:
(1) how any conflicts of interest identified by the **authorised fund manager** under SYSC 10.1.23R (Additional requirements for an **AIFM**) and article 30 of the **AIFMD level 2 regulation** have been avoided, managed, monitored and (where applicable) disclosed under SYSC 10.1.24R (Additional requirements for an **AIFM**) and articles 31 to 36 of the **AIFMD level 2 regulation**; and

(2) how, in relation to each conflict of interest identified, those actions were in the best interests of the **LTAF**, the **LTAF**’s investors and the integrity of the market.

4 Liquidity management

In relation to the management of liquidity of the **long-term asset fund**:

(1) how the liquidity profile of the **LTAF**, taking into account borrowing (if any), has been consistent with its redemption policy;

(2) where monitoring of the liquidity risk of the **LTAF**, including the results of any stress tests, has identified any liquidity management issues, how these were addressed in the best interests of the **LTAF**, the **LTAF**’s investors and the integrity of the market;

(3) where the **authorised fund manager** has sold an **investment** held in the scheme property of the **LTAF** at a price adjusted to reflect the **authorised fund manager**’s need to meet redemption requests, how that price was determined to be in the best interests of the **LTAF**, the **LTAF**’s investors and the integrity of the market; and

(4) how decisions to apply or refrain from applying any **dilution levy** or adjustment to sales and **redemptions of units** ensured that all investors in the **LTAF** were treated fairly, including those investors who were dealing in **units** of the **LTAF**, and those investors who (as applicable) were already invested or remained invested in the **LTAF**.

[Note: See FUND 3.6.3R (Liquidity systems and procedures) and articles 46 to 49 of the **AIFMD level 2 regulation**.]

Independent directors

15.7.22

(1) An **authorised fund manager** must ensure that at least one quarter of the members of its **governing body** are independent natural persons. If the **AFM**’s **governing body** comprises fewer than eight members, the **AFM** must instead ensure that at least two of its members are independent natural persons.

(2) The **authorised fund manager**, in appointing an independent member of its **governing body**, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member’s judgement.

(3) The **authorised fund manager** must take reasonable steps to ensure that independent members appointed to its **governing body** have sufficient expertise and experience to be able to make judgements on whether the **AFM** is managing each **scheme** in the best interests of **unitholders**.

(4) (a) Independent members of an **AFM**’s **governing body** must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
(b) If an independent member is appointed to more than one governing body within an AFM’s group, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a person who served as an independent director of an AFM’s governing body before 1 October 2019, the five-year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an AFM’s governing body until five years have elapsed from the end of the ten-year period referred to in (4).

(6) The terms of employment on which independent members are appointed must be such as to secure their independence.

15.7.23 [G] The guidance in ■ COLL 6.6.26G applies to interpreting the requirement for independence in ■ COLL 15.7.22R.

Allocation of responsibility for compliance to an approved person

15.7.24 [R] (1) An AFM must allocate responsibility for ensuring its compliance with ■ COLL 15.7.17R, ■ COLL 15.7.20R, ■ COLL 15.7.22R and ■ COBS 2.1.4R (AIFMs’ best interests rules) to an approved person.

(2) Where the chair of the AFM’s governing body is an approved person, the AFM must allocate the responsibility set out in (1) to that person.

[Note: See ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities).]
Section 15.8: Valuation, pricing, dealing and income

Application

15.8.1 This section applies to:

(1) an authorised fund manager of an AUT, ACS or an ICVC;
(2) any other director of an ICVC;
(3) the depositary of an AUT, ACS or an ICVC; and
(4) an ICVC,
    which is a long-term asset fund.

Valuation, pricing and dealing

15.8.2 (1) The value of the scheme property is the net value of the scheme property after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).

(2) Any part of the scheme property which is not an investment (save an immovable) must be valued at fair value.

(3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.

(4) The value of the scheme property of an authorised fund must, save as otherwise provided in this section, be determined in accordance with the provisions of the instrument constituting the fund and the prospectus, as appropriate.

(5) The scheme must have a valuation point on each dealing day and there must be at least one valuation point every month.

(6) The authorised fund manager must prepare a valuation in accordance with (4) for each relevant type of unit at each relevant valuation point.

(7) The price of a unit must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between unitholders.
(8) In respect of each valuation point under (5), the authorised fund manager must publish in an appropriate manner the price of any type of unit based on the valuation carried out in accordance with (6).

(9) The authorised fund manager must also provide on request to any unitholder at any time an estimated price for any type of unit in the scheme.

(10) The period of any initial offer and how it should end must be set out in the prospectus and must not be of unreasonable length.

Profits from dealing as principal

15.8.3 R

(1) Where an authorised fund manager:

(a) accepts instructions to sell and redeem units as principal; and

(b) is able to execute a sale instruction by selling units it has redeemed at the same valuation point, without placing its own capital at risk,

subject to (2), the AFM must not retain for its own account, or the account of any of its associates, the difference between the price at which a unit was redeemed (before deduction of any redemption charge) and the price at which the same unit was sold (after deduction of any preliminary charge). Any such difference must be allocated in a way that is fair to unitholders.

(2) In calculating the profit arising under (1), the AFM may offset any loss it incurs at the same valuation point, calculated in accordance with (3), when dealing as principal in relation to:

(a) a unit issued at that valuation point to fulfil a sale instruction that cannot be matched against any redeemed unit or any other unit of that class held by the manager as principal; and

(b) a unit redeemed and cancelled at that valuation point.

(3) The amount of the loss referred to in (2) is:

(a) for units issued in accordance with (2)(a), the difference between the issue price of a unit and the sale price of that unit, less any preliminary charge;

(b) for units cancelled in accordance with (2)(b), the difference between the cancellation price of a unit and the redemption price of that unit, before any redemption charge is applied.

(4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent valuation point.

(5) This rule applies to the redemption and sale of units of different classes at the same valuation point, if those classes are treated as one for the purpose of COLL 15.8.6R (Issue and cancellation of units in multiple classes).

15.8.4 G

(1) The authorised fund manager may commit its own capital to hold units for dealing as principal and may seek to profit from gains in the value of the units it holds, when it issues or redeems units at one
valuation point then sells or cancels them at a later valuation point. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the units fall in value, or from the ability to match simultaneous sales and redemptions at different prices at no risk to its own capital.

(2) The AFM may allocate any amount arising under COLL 15.8.3R(1) (Profits from dealing as principal) in the interests of investors by paying it into scheme property for the benefit of all unitholders. Alternatively, the AFM may redistribute it individually among the transacting investors.

(3) Where the AFM intends to allocate a payment to scheme property, it should determine if the amount (when added to any other amounts of the same kind relating to that class of units) would, if taken into account in the scheme’s valuation, affect the accuracy of the unit prices to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the scheme until the payment is transferred. Such payments into scheme property should be made regularly and no less frequently than payments for the AFM’s management charge are transferred out of scheme property.

(4) The calculation to be performed under COLL 15.8.3R (Profits from dealing as principal) should be carried out in relation to each valuation point of the scheme on a timely basis. Where it is not practical to do this before unit prices are calculated and published, the AFM should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to scheme property.

### Issue and cancellation of units

15.8.5

(1) The authorised fund manager must:

(a) ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to unitholders of that class; and

(b) not do or omit anything that would, or might, confer on itself a benefit or advantage at the expense of a unitholder or potential unitholder.

(2) For the purposes of (1) the authorised fund manager may take into account sales and redemptions after the valuation point, provided it has systems and controls to ensure compliance with (1).

(3) The authorised fund manager must arrange for the issue and cancellation of units and pay money or assets to or from the depositary for the account of the scheme as required by the prospectus.

(4) The authorised fund manager must keep a record of issues and cancellations made under this rule.

(5) The authorised fund manager may arrange for the ICVC, or instruct the depositary of the AUT or ACS, to issue or cancel units where the authorised fund manager would otherwise be obliged to sell or redeem the units in the manner set out in the prospectus.
(6) Where the authorised fund manager has not complied with (1), it must correct the error as soon as possible and must reimburse the scheme any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the prospectus.

### Issue and cancellation of units in multiple classes

15.8.6 If a long-term asset fund has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if:

1. the depositary gives its prior agreement; and

2. the relevant classes:
   
   a. have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or
   
   b. differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in each class is calculated by reference to undivided shares in the scheme property.

### Transfer of units in an ACS

15.8.7 Where transfer of units in an ACS is allowed by its contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules, the authorised contractual scheme manager of the ACS must take reasonable care to ensure that units are only transferred if the conditions specified by the FCA under (2) are met.

2. The FCA specifies that for the purposes of (1), and for the purposes of
   
   COLL 15.3.6R(3)(9)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and COLL 15.4.5R(18)(2) (Table: contents of long-term asset fund prospectus), units in the ACS may only be transferred to a person:
   
   a. who is a:
      
      i. professional ACS investor; or
      
      ii. large ACS investor; or
      
      iii. person who already holds units in the scheme; and
   
   b. to whom units in a long-term asset fund may be promoted under

   COBS 4.12.4R.

15.8.8 The FCA recognises that some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder, or otherwise) and are accordingly outside the control of the authorised contractual scheme manager. The authorised contractual scheme manager is expected to comply with its responsibilities under COLL 15.8.10R (Redemption of ACS units in an LTAF by an authorised contractual scheme manager) in those cases by redeeming those units.
Responsibilities of the authorised contractual scheme manager in relation to ACS units

15.8.9 (1) The authorised contractual scheme manager of an authorised contractual scheme which is a long-term asset fund must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder in a long-term asset fund, unless:

(a) that person is a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme; and

(b) units in a long-term asset fund may be promoted to that person under COBS 4.12.4R.

(2) The authorised contractual scheme manager will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Redemption of ACS units in an LTAF by an authorised contractual scheme manager

15.8.10 The authorised contractual scheme manager of a long-term asset fund which is an ACS must redeem units in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in COLL 15 Annex 1R(1) and (2) (ACS Long-Term Asset Funds: eligible investors).

Dealing: sale of units

15.8.11 The authorised fund manager must, at all times during the dealing day, be willing to effect the sale of units to any eligible investor (subject to any conditions in the instrument constituting the fund and the prospectus, which must be fair and reasonable as between all unitholders and potential unitholders) for whom the authorised fund manager does not have reasonable grounds to refuse such sale.

Dealing: redemption of units

15.8.12 (1) In this rule, a ‘redemption determination’ is a determination by the authorised fund manager of the long-term asset fund to:

(a) accept a request by a unitholder to redeem units in the scheme;

(b) refuse a redemption request (see paragraph (2)(c)); or

(c) make such other determination in relation to the redemption request as may be provided for in the instrument constituting the fund and the prospectus (see paragraph (6) below, and COLL 15.8.13G(6) and (7)).

(2) The redemption arrangements for a long-term asset fund must ensure the following:
(a) A unitholder must be able to submit a request to redeem units before the next date on which the authorised fund manager makes a redemption determination, subject to any cut-off point which may be specified in the prospectus for this purpose.

(b) The authorised fund manager must not make redemption determinations more frequently than the dealing frequency of the scheme and, in any event, not more than once a month.

(c) The authorised fund manager must accept a unitholder’s request to redeem units in the scheme in accordance with any conditions in the instrument constituting the fund and the prospectus unless the authorised fund manager has reasonable grounds to refuse the redemption request.

(d) The authorised fund manager must inform the unitholder of the outcome of the redemption determination.

(e) If the authorised fund manager accepts the unitholder’s request to redeem units in the scheme:

   (i) the redemption request is deemed to be irrevocable;

   (ii) the authorised fund manager must undertake to effect the redemption at the applicable time, in accordance with any conditions in the instrument constituting the fund and the prospectus; and

   () the authorised fund manager must confirm to the unitholder:

      (A) that the redemption request has been accepted and cannot be revoked; and

      (B) having regard to the period specified for the purposes of (f), the dates on which it is expected that the redemption will be effected and the appropriate proceeds paid.

(f) The authorised fund manager must determine the price for the units being redeemed pursuant to the unitholder’s redemption request at the first valuation point following the end of the notice period specified in the instrument constituting the fund and the prospectus (the ‘notice period’).

(g) The notice period must be at least 90 days after the day on which the request to redeem units in the scheme was accepted.

(h) The authorised fund manager must redeem the units at the price determined in accordance with (f) and pay the unitholder the appropriate proceeds of redemption in accordance with paragraphs (4) and (5).

(3) Subject to ■ COBS 2.1.4R (AIFMs’ best interests rule) and ■ COLL 15.3.2R (Classes of unit), where the long-term asset fund has more than one class of unit, the arrangements for the redemption of units may differ between classes provided the arrangements for all classes of unit ensure the matters specified in (2).

(4) After having effected a redemption request, the authorised fund manager must pay the full proceeds of the redemption to the unitholder within any reasonable period specified in the prospectus, unless it has reasonable grounds for withholding payment.

(5) Payment of proceeds on redemption must be made by the authorised fund manager in any manner provided for in the prospectus which
must be fair and reasonable as between redeeming unitholders and continuing unitholders.

(6) If the instrument constituting the fund and the prospectus of a long-term asset fund permit the authorised fund manager to defer or limit a requested redemption, those arrangements must not result in:

(a) the authorised fund manager making redemption determinations more frequently than once a month (see paragraph (2)(b)); or

(b) the notice period being shorter than 90 days (see paragraph (2)(g)).

Sale and redemption of units: guidance

(1) The authorised fund manager of a long-term asset fund is required to ensure that the investment strategy, liquidity profile and redemption policy for the scheme are consistent (see FUND 3.6.2R (Alignment of investment strategy, liquidity profile and redemption policy)).

(2) Given the type of investments that a long-term asset fund is likely to hold in its scheme property, the FCA considers that a long-term asset fund will need to operate particular arrangements for the redemption of units.

(3) The authorised fund manager of a long-term asset fund must not make redemption determinations more frequently than once a month (see COLL 15.8.12R(2)(b)), which is the maximum frequency for determining such requests and effecting redemptions. The rules also require a long-term asset fund to have a notice period of at least 90 days (see COLL 15.8.12R(2)(g)). This is the minimum notice period for a long-term asset fund.

(4) However, the frequency of the days on which redemption determinations are made and the particular notice period which is appropriate for a long-term asset fund will depend on the reasonable expectations of the target investor group and the particular investment objectives, investment policy and investment strategy of the scheme.

(5) The authorised fund manager must also comply with the AIFMD level 2 regulation, which contains detailed requirements about liquidity management taking into account the long-term asset fund’s investment strategy, liquidity profile and redemption policy. See, for example, articles 46 to 49 of the AIFMD level 2 regulation.

(6) Other determinations which an authorised fund manager may make, if provided for in the instrument constituting the fund and the prospectus (see COLL 15.8.12R(1)(c)), could include a deferral of execution of a redemption request or payment, or a limit on the value or number of units which can be redeemed at any one valuation point.

(7) Redemption determinations should be carried out so that all unitholders who have requested redemption at any one valuation point are treated fairly.
Property Authorised Investment Funds

The authorised fund manager of a long-term asset fund that is also 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 scheme (the "maximum allowable").

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

- the body corporate holds units in a unit trust scheme which holds shares in the property authorised investment fund; and
- 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.

Where the authorised fund manager of a property authorised investment fund becomes aware that a body corporate holds more than the maximum allowable, the authorised fund manager must:

- notify the body corporate of that event;
- not pay any income distribution to the body corporate; and
- redeem or cancel units forming the body corporate’s holding down to the maximum allowable within a reasonable timeframe.

For the purpose of (3)(c), a reasonable timeframe means the timeframe which the authorised fund manager reasonably considers to be appropriate having regard to the interests of the unitholders as a whole.

Reasonable steps to monitor the maximum allowable include:

1. regularly reviewing the register; and
2. taking reasonable steps to ensure that unitholders are kept informed of the requirement that no body corporate may hold more than 10% of the net asset value of a property authorised investment fund.

Payments

1. An ICVC must not incur any expense in respect of the use of any movable or immovable property unless the scheme is dedicated to such investment or such property is necessary for the direct pursuit of its business.

2. Payments out of the scheme property may be made from capital property rather than from income, provided the basis for this is set out in the prospectus.

Exemption from liability to account for profits

Except as provided in COLL 15.8.3R (Profits from dealing as principal), an affected person is not liable to account to another affected person or to the unitholders of the scheme for any profits or benefits it makes or receives that are made or derived from or in connection with:
(1) dealings in the units of a scheme; or

(2) any transaction in scheme property; or

(3) the supply of services to the scheme;
   where disclosure of the non-accountability has been made in the prospectus of the scheme.

**Income**

1. A long-term asset fund must have:
   - an annual accounting period;
   - a half-yearly accounting period; and
   - an accounting reference date;
     the details of which must be set out in the prospectus.

2. COLL 6.8.2R(2) to COLL 6.8.2R(7) (Accounting periods) also apply to the half-yearly accounting period and annual accounting period of a long-term asset fund.

3. A long-term asset fund must have an annual income allocation date, which must be within four months of the accounting reference date.

4. A long-term asset fund may have an interim income allocation date and interim accounting periods and if it does, the interim income allocation date must be within a reasonable period of the end of the relevant interim accounting period as set out in the prospectus.

5. COLL 6.8.3R(3) (Income allocation and distribution) to COLL 6.8.3AG (Allocation of income to difference classes of unit) also apply to a long-term asset fund.
15.9 Operational requirements for feeder LTAFs

Application

This section applies as follows:

(1) COLL 15.9.2R to COLL 15.9.6R apply to the authorised fund manager of a feeder LTAF;

(2) COLL 15.9.6R also applies to:
   (a) an ICVC that is a feeder LTAF; and
   (b) any person acting on behalf of either the feeder LTAF or the authorised fund manager of the feeder LTAF; and

(3) COLL 15.9.7R applies to the authorised fund manager of a long-term asset fund which operates as a qualifying master LTAF to a feeder LTAF.

Pre-investment requirements of the authorised fund manager of a feeder LTAF

Before investing in the qualifying master LTAF, the authorised fund manager of the feeder LTAF must:

(1) be satisfied on reasonable grounds that it can obtain from the qualifying master LTAF all the information necessary to comply on an ongoing basis with the rules in COLL;

(2) having consulted with the depositary of the feeder LTAF, be satisfied on reasonable grounds that the depositary of the feeder LTAF can obtain from the qualifying master LTAF, the operator of the qualifying master LTAF or the depositary of the qualifying master LTAF all the information necessary to comply with its duties under COLL 15.7.6R and COLL 15.7.7R (Duties of the depositary); and

(3) inform the authorised fund manager of the qualifying master LTAF of the date on which the feeder LTAF will begin to invest into the qualifying master LTAF as a feeder LTAF.

Ownership of units in a feeder LTAF

The authorised fund manager of a feeder LTAF must take reasonable care to ensure that its units are not owned, including beneficially owned, by the
qualifying master LTAF or any other scheme in which the qualifying master LTAF invests.

Charges made by the qualifying master LTAF or its operator to a feeder LTAF on investment or disposal

15.9.4 Where the operator or the authorised fund manager of a qualifying master LTAF imposes any charge which is, or is equivalent in effect to, a preliminary charge or redemption charge on the feeder LTAF for the acquisition or disposal of units in the qualifying master LTAF, the authorised fund manager of the feeder LTAF must pay to the feeder LTAF an amount equal to such charge within four business days following the relevant acquisition or disposal.

(2) In this rule, where the operator or authorised fund manager of a qualifying master LTAF requires any addition to or deduction from the consideration paid on the acquisition or disposal of units in the qualifying master LTAF which is, or is equivalent in effect to, a dilution levy made in accordance with the instrument constituting the fund and the prospectus, it is to be treated as part of the price of the units and not as part of any preliminary charge or redemption charge referred to in (1).

Avoidance of opportunities for market timing

15.9.5 The authorised fund manager of a feeder LTAF must take appropriate measures to co-ordinate the timing of the feeder LTAF’s valuation points and dealing days with those of its qualifying master LTAF, including the publication of dealing prices, in order to avoid market timing of their units, and prevent arbitrage opportunities.

Inducements

15.9.6 Where, in connection with an investment in the units of the qualifying master LTAF, a distribution fee, commission or other monetary benefit is received by:

(1) a feeder LTAF;

(2) an authorised fund manager of a feeder LTAF; or

(3) any person acting on behalf of (1) or (2),

that fee, commission or other monetary benefit must be paid into the scheme property of the feeder LTAF within four business days of receipt of that fee, commission or other monetary benefit.

Obligations to unitholders of a qualifying master LTAF

15.9.7 Where the qualifying master LTAF is an authorised fund, the authorised fund manager of the qualifying master LTAF must not, if it would unfairly prejudice the interests of unitholders of the qualifying master LTAF other than the feeder LTAF, provide or make available information to the authorised fund manager of the feeder LTAF without at the same time also providing or making available that information to the unitholders of the qualifying master LTAF other than the feeder LTAF.
15.10 Termination, suspension, and schemes of arrangement

Application

15.10.1 R This section applies to:

(1) an authorised fund manager of an AUT, ACS or an ICVC;

(2) any other director of an ICVC;

(3) the depositary of an AUT, ACS or an ICVC; and

(4) an ICVC, which is a long-term asset fund.

Termination

15.10.2 R For a long-term asset fund the provisions in COLL 7.3 to COLL 7.5 will apply as appropriate as if COLL 7 applied to long-term asset funds.

Suspension

15.10.3 R (1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, within any parameters which are fair and reasonable in respect of all the unitholders in the scheme and which are set out in the prospectus, temporarily suspend dealings in units of the scheme, a sub-fund or a class.

(2) Any suspension within (1) must only be where the authorised fund manager has determined that due to exceptional circumstances the suspension of dealings is in the interests of unitholders or potential unitholders, and the authorised fund manager must have regard to the interests of all the unitholders in the scheme in reaching such an opinion.

(3) At the commencement of suspension under (1), the authorised fund manager must immediately inform the FCA of the suspension and the reasons for it.

(4) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.
(5) The *authorised fund manager* and the *depositary* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.

(6) The suspension of dealings in units must cease, as soon as (2) no longer applies.

(7) The *authorised fund manager* and the *depositary* must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (3).

(8) The *authorised fund manager* must inform the FCA immediately of the resumption of dealings.

**Schemes of arrangement**

In relation to an ICVC, ACS or an AUT which is a *long-term asset fund*, the provisions in COLL 7.6 (Schemes of arrangement) will apply as appropriate to the *authorised fund manager*, any other *directors* of the ICVC and the *depositary* as if COLL 7.6 applied to a *long-term asset fund* and did not exclude *unitholders* becoming *unitholders* in another *long-term asset fund*. 

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**Note:** For the latest version of this content, please visit the official source: [www.handbook.fca.org.uk](http://www.handbook.fca.org.uk)
ACS Long-term asset funds: Eligible investors

This Annex belongs to COLL 15.1.3R and COLL 15.1.4G.

For the purposes of the rule on qualified investors in a long-term asset fund which is an ACS (see COLL 15.1.3R(2)), the authorised contractual scheme manager must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a person:

(1) who is a:
   a) professional ACS investor; or
   b) large ACS investor; or
   c) person who already holds units in the scheme; and

(2) to whom units in a long-term asset fund may be promoted to that person under COBS 4.12.4R.
COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.
(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.

(6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid overburdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.

(7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company (see page 42 of this Official Journal). For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.

(8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are
appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.


(10) It should be recognised that cross-referencing to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.

(11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.

(12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors’ interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.

(14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be
prepared on the basis that the investor does not wish or need to be informed in
detail about the individual features of each of the underlying collectives, which in
any case are likely to vary from time to time if the UCITS is being actively
managed. However, in order for the key investor information document to deliver
effective disclosure of the fund of funds’ objective and investment policy, risk
factors, and charging structure, the characteristics of its underlying funds should be
transparent.

(15) In the case of master-feeder structures, the description of the feeder UCITS'
risk and reward profile should not be materially different to that of the
 corresponding section in the master UCITS’ key investor information document so
that the feeder can copy information from the key investor information document
of the master wherever it is relevant. However, this information should be
supplemented by relevant statements or duly adjusted in those cases where
ancillary assets held by the feeder might modify the risk profile compared to the
master, addressing the risks inherent in these ancillary assets, for instance where
derivatives are used. The combined costs of investing in the feeder and the master
should be disclosed to investors in the feeder.

(16) With regard to structured UCITS, such as capital protected and other
comparable UCITS, the provision of prospective performance scenarios in place of
past performance information is required. Prospective performance scenarios
involve calculating the expected return of the fund under favourable, adverse, or
neutral hypotheses regarding market conditions. These scenarios should be chosen
so as to effectively illustrate the full range of possible outcomes according to the
formula.

(17) Where the key investor information and the prospectus are to be provided in
a durable medium other than paper or by means of a website, additional safety
measures are necessary for investor protection reasons, so as to ensure that
investors receive information in a form relevant to their needs, and so as to
maintain the integrity of the information provided, prevent alterations that
undermine its comprehensibility and effectiveness, and avoid manipulation or
modification by unauthorised persons. This Regulation contains a reference to rules
on durable medium laid down in the Commission Directive 2006/73/EC of 10
the Council as regards organisational requirements and operating conditions for
investment firms and defined terms for the purposes of that Directive (OJ L 241,
2.9.2006, p. 26) in order to ensure the equal treatment of investors and a level
playing field in financial sectors.

(18) In order to allow management companies and investment companies to adapt
to the new requirements contained in this Regulation in an efficient and effective
manner, the starting date of application of this Regulation should be aligned with
the transposition of Directive 2009/65/EC.

(19) The Committee of European Securities Regulators, established by Commission
Decision 2009/77/EC (OJ L 25, 29.1.2009, p. 18), has been consulted for technical
advice.

(20) The measures provided for in this Regulation are in accordance with the
opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES
**Article 1**

**Subject matter**

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

**Article 1A**

**Definitions**

(a) 'Collective Investment Schemes sourcebook’ means the Collective Investment Schemes sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as in force on IP completion day.

(b) 'feeder UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(c) 'management company' has the meaning given in section 237(2) of the Financial Services and Markets Act 2000;

(d) 'master UCITS' has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(e) 'UCITS’ has the meaning given in section 236A of the Financial Services and Markets Act 2000; and

(f) 'UK UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000.

**Article 2**

**General principles**

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UK UCITS it manages.

2. This Regulation shall apply to any investment company which has not designated a management company that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in article 51ZA of the Regulated Activities Order 2001.

**Article 3**

**Principles regarding the key investor information document**

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.

2. The key investor information shall be fair, clear and not misleading.

3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UK UCITS and its risks and benefits.
CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 13.

2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.

3. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest'.

4. The identification of the UK UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UK UCITS shall follow the compartment or share class name. Where a code number identifying the UK UCITS, investment compartment or share class exists, it shall form part of the identification of the UK UCITS.

5. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.
11. The section of the key investor information document entitled ‘Practical information’ shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

‘This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority’.

13. Information on publication shall consist of the following statement:

‘This key investor information is accurate as at [the date of publication]’.

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor’s understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III
CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the ‘Objectives and investment policy’ section of the key investor information document shall cover those essential features of the UK UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

(a) the main categories of eligible financial instruments that are the object of investment;

(b) the possibility that the investor may redeem units of UK UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UK UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UK UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UK UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UK UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UK UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as ‘growth’, ‘value’ or ‘high dividends’;

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UK UCITS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UK UCITS, a statement that this is the
case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the UK UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UK UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UK UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the UK UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UK UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UK UCITS;
(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UK UCITS may shift over time;

(c) a statement that the lowest category does not mean a risk-free investment;

(d) a brief explanation as to why the UK UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UK UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

(a) credit risk, where a significant level of investment is made in debt securities;

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UK UCITS as a whole;

(c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;

(d) operational risks and risks related to safekeeping of assets;

(e) impact of financial techniques as referred to in COLL 5.2.19R such as derivative contracts on the UK UCITS’ risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

**Article 9**

**Principles governing the identification, explanation and presentation of risks**

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UK UCITS’ management company as laid down in 6.12 of COLL. Where a management company manages more than one UK UCITS, the risks shall be identified and explained in a consistent fashion.

**SECTION 3**

**Charges**

**Article 10**

**Presentation of charges**

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

(a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor’s capital commitment to the UK UCITS;
(b) a single figure shall be shown for charges taken from the UK UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UK UCITS over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UK UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

(a) with regard to entry and exit charges:

(i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

(ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

(b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UK UCITS, including the costs of marketing and distributing the UK UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UK UCITS, this shall be stated within the ‘Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UK UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UK UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:
(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The ‘Charges’ section shall include, where relevant, a cross-reference to those parts of the UK UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UK UCITS shall be presented in a bar chart covering the performance of the UK UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UK UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UK UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UK UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.
**Article 16**

**Past performance calculation methodology**

The calculation of past performance figures shall be based on the net asset value of the UK UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

**Article 17**

**Impact and treatment of material changes**

1. Where a material change occurs to a UK UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UK UCITS' past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

**Article 18**

**Use of a benchmark alongside the past performance**

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UK UCITS' past performance.

2. For UK UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UK UCITS did not exist.

**Article 19**

**Use of 'simulated' data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

   (a) a new share class of an existing UK UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UK UCITS;

   (b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

      (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

      (ii) the feeder's characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.
3. A UK UCITS changing its status shall retain its performance record only where the Financial Conduct Authority reasonably assesses that the change of status would not impact the UK UCITS' performance.

4. In the case of mergers, as defined in regulation 7 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011, only the past performance of the receiving UK UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in the United Kingdom:

(a) the name of the depositary;

(b) where and how to obtain further information about the UK UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax position of the UK UCITS may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UK UCITS.'

2. Where the key investor information document is prepared for a UK UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21

Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors'
understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UK UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.

2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.

2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.

3. A key investor information document with duly revised presentation of past performance of the UK UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for
'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UK UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UK UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR UK UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a UK UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UK UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UK UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UK UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.
2. The key investor information pertinent to two or more classes of the same UK UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UK UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UK UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UK UCITS that are marketed in the UK.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UK UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in COLL 5.2.13R, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UK UCITS as a whole.

Article 30

Charges section
The description of the charges shall take account of any charges that that UK UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UK UCITS’ calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:
   (i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or
   (ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33

Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.
2. The information referred to in paragraph 1 shall include:

(a) a statement that the master UCITS’ prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with [COLL 4.2.3R and 4.5.15R].

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder’s tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured UK UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UK UCITS shall not contain the ‘Past performance’ section.

For the purposes of this Section, structured UK UCITS shall be understood as UK UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UK UCITS with similar features.

2. For structured UK UCITS, the ‘Objectives and investment policy’ section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.
3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UK UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula. They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UK UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements. However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

**Article 37**

**Length**

The key investor information document for structured UK UCITS shall not exceed three pages of A4-sized paper when printed.

**CHAPTER V**

**DURABLE MEDIUM**

**Article 38**

**Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website**

1. Where the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:
(a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 July 2011.

Done at Brussels, 1 July 2010.

For the Commission
The President
José Manuel BARROSOL

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.

2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.

3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.
4. The category into which the UCITS falls shall be prominently indicated.

5. No colours shall be used for distinguishing between items on the scale.

ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way: One-off charges taken before or after you invest

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry charge</td>
<td>[ ] %</td>
</tr>
<tr>
<td>Exit charge</td>
<td>[ ] %</td>
</tr>
<tr>
<td>This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]</td>
<td></td>
</tr>
</tbody>
</table>

Charges taken from the fund over a year

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing charge</td>
<td>[ ] %</td>
</tr>
</tbody>
</table>

Charges taken from the fund under certain specific conditions

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance fee</td>
<td>[ ] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]</td>
</tr>
</tbody>
</table>

- A percentage amount shall be indicated for each of these charges.

- In the case of a performance fee, the amount charged in the fund’s last financial year shall be included as a percentage figure.

ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;

3. the X-axis shall be set at the level of 0% performance;

4. a label shall be added to each bar indicating the return in percentage that was achieved;

5. past performance figures shall be rounded to one decimal place.
Appendix 2
Modifications to the KII Regulation for KII-compliant NURS

CHAPTER I
SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1
Subject matter
[deleted]

Article 1A
Definitions
[deleted]

Article 2
General principles
1. Requirements laid down in this Regulation shall apply to any authorised fund manager with regard to each KII-compliant NURS it manages.

2. This Regulation shall apply to any ICVC which has chosen not to appoint an authorised corporate director.
Principles regarding the NURS-KII document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as a NURS-KII document). No other information or statements shall be included except where this Regulation states otherwise.

2. The key investor information shall be fair, clear and not misleading.

3. The NURS-KII document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the KII-compliant NURS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the NURS-KII document shall be presented in the order as set out in paragraphs 2 to 13.

2. The title ‘Non-UCITS retail scheme Key investor information’ shall appear prominently at the top of the first page of the NURS-KII document.

3. An explanatory statement shall appear directly underneath the title. It shall read:

‘This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest’.

4. The identification of the KII-compliant NURS, including the class or sub-fund thereof, shall be stated prominently. In the case of a sub-fund or class, the name of the KII-compliant NURS shall follow the sub-fund or class name. Where a code number identifying the KII-compliant NURS sub-fund or class exists, it shall form part of the identification of the KII-compliant NURS.

5. The name of the authorised fund manager shall be stated.

6. In addition, in cases where the authorised fund manager forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the NURS-KII document entitled ‘Objectives and investment policy’ shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the NURS-KII document entitled ‘Risk and reward profile’ shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the NURS-KII document entitled ‘Charges’ shall contain the information set out in Section 3 of Chapter III of this Regulation.
10. The section of the *NURS-KII document* entitled ’Past performance’ shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the *NURS-KII document* entitled ’Practical information’ shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

’This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority’.

13. Information on publication shall consist of the following statement:

’This key investor information is accurate as at [the date of publication]’.

**SECTION 2**

**Language, length and presentation**

**Article 5**

**Presentation and language**

1. A *NURS-KII document* shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor’s understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the *NURS-KII document* is printed or photocopied in black and white.

3. Where the design of the corporate branding of the *authorised fund manager* or the group to which it belongs is used, it shall not distract the investor or obscure the text.

**Article 6**

**Length**

The *NURS-KII document* shall not exceed two pages of A4-sized paper when printed.

**CHAPTER III**
CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the ‘Objectives and investment policy’ section of the NURS-KII document shall cover those essential features of the KII-compliant NURS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

(a) the main categories of eligible financial instruments or other classes of assets that are the object of investment;

(b) the possibility that the investor may redeem units of the KII-compliant NURS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the KII-compliant NURS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the KII-compliant NURS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the KII-compliant NURS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the KII-compliant NURS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the KII-compliant NURS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details of the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as ‘growth’, ‘value’ or ‘high dividends’;
(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the KII-compliant NURS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the KII-compliant NURS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the KII-compliant NURS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

‘Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]’.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by an authorised fund manager as specified under paragraphs 1(d) and 2(b), (c) and (d).

4. The ‘Objectives and investment policy’ section of the NURS-KII document may contain elements other than those listed in paragraph 2, including the description of the KII-compliant NURS’ investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the KII-compliant NURS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The ‘Risk and reward profile’ section of the NURS-KII document shall contain a synthetic indicator (except where paragraph 6 applies), supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the KII-compliant NURS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the KII-compliant NURS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Authorised fund managers shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.
4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the KII-compliant NURS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the KII-compliant NURS may shift over time;

(c) a statement that the lowest category does not mean a risk-free investment;

(d) a brief explanation as to why the KII-compliant NURS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the KII-compliant NURS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

(a) credit risk, where a significant level of investment is made in debt securities;

(b) liquidity risk, where a significant level of investment is made in immovables, or in financial instruments which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the KII-compliant NURS as a whole;

(c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;

(d) operational risks and risks related to safekeeping of assets;

(e) impact of financial techniques such as derivative contracts on the KII-compliant NURS’ risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

6. A KII-compliant NURS having a significant exposure to immovables as permitted under COLL 5.6.18R (whereby significant exposure is understood as an exposure of at least 20% in value of the scheme property):

(a) shall not include a synthetic risk and reward indicator in the ‘Risk and reward profile’ section of its NURS-KII document; and

(b) must instead include a full narrative disclosure of risks that are materially relevant to the fund within that section of the NURS-KII document;

7. Paragraph 6 will also apply to a NURS-KII document for a feeder NURS whose qualifying master scheme has a significant exposure to immovables.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk
adopted by the *authorised fund manager*. Where an *authorised fund manager* manages more than one *KII-compliant NURS*, the risks shall be identified and explained in a consistent fashion.

**SECTION 3**

**Charges**

*Article 10*

**Presentation of charges**

1. The ‘Charges’ section of the *NURS-KII document* shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

   (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor’s capital commitment to the *KII-compliant NURS*;

   (b) a single figure shall be shown for charges taken from the *KII-compliant NURS* over a year, to be known as the ‘ongoing charges’, representing all annual charges and other payments taken from the assets of the *KII-compliant NURS* over the defined period, and based on the figures for the preceding year;

   (c) the table shall list and explain any charges taken from the *KII-compliant NURS* under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

*Article 11*

**Explanation of charges and a statement about the importance of charges**

1. The ‘Charges’ section shall contain a narrative explanation of each of the charges specified in the table including the following information:

   (a) with regard to entry and exit charges:

      (i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

      (ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

   (b) with regard to ‘ongoing charges’, there shall be a statement that the ongoing charges figure is based on the last year’s expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The ‘Charges’ section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the *KII-compliant NURS*, including the costs of marketing and distributing the *KII-compliant NURS*, and that these charges reduce the potential growth of the investment.

*Article 12*

**Additional requirements**
1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the \textit{KII-compliant NURS}, this shall be stated within the ‘Objectives and investment policy’ section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the \textit{KII-compliant NURS}' last financial year shall be included as a percentage figure.

\textit{Article 13}

\textbf{Specific cases}

1. Where a new \textit{KII-compliant NURS} cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the \textit{authorised fund manager} gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

\textit{Article 14}

\textbf{Cross-referencing}

The ‘Charges’ section shall include, where relevant, a cross-reference to those parts of the \textit{KII-compliant NURS prospectus} where more detailed information on charges can be found, including information on performance fees and how they are calculated.

\textbf{SECTION 4}

\textbf{Past performance}

\textit{Article 15}

\textbf{Presentation of past performance}

1. The information about the past performance of the \textit{KII-compliant NURS} shall be presented in a bar chart covering the performance of the \textit{KII-compliant NURS} for the last 10 years.

The size of the bar chart referred to in the first sub-paragraph shall allow for legibility, but shall under no circumstances exceed half a page in the \textit{NURS-KII document}.

2. \textit{KII-compliant NURS} with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.
3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a KII-compliant NURS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to KII-compliant NURS which do not have entry or exit charges.

6. A NURS-KII document shall not contain any record of past performance for any part of the current calendar year.

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the KII-compliant NURS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a KII-compliant NURS’ objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the KII-compliant NURS’ past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the ‘Objectives and investment policy’ section of the NURS-KII document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the KII-compliant NURS’ past performance.

2. For KII-compliant NURS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the KII-compliant NURS did not exist.
Article 19

Use of ‘simulated’ data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new class of an existing KII-compliant NURS may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the KII-compliant NURS;

(b) a feeder NURS may simulate its performance by taking the performance of its qualifying master scheme, provided that one of the following conditions are met:

(i) the feeder NURS’ strategy and objectives do not allow it to hold assets other than units of the qualifying master scheme and ancillary liquid assets;

(ii) the feeder NURS’ characteristics do not differ materially from those of the qualifying master scheme.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A KII-compliant NURS changing its legal status but remaining established in the United Kingdom shall retain its performance record only where the FCA reasonably assesses that the change of status would not impact the KII-compliant NURS’ performance.

4. In the case of mergers whereby:

(a) one or more schemes or sub-funds thereof, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing KII-compliant NURS or a sub-fund thereof (the ‘receiving KII-compliant NURS’), in exchange for the issue to their unitholders of units of the receiving KII-compliant NURS; or

(b) one or more schemes or sub-funds thereof, which continue to exist until the liabilities have been discharged, transfer their net assets to a KII-compliant NURS which they form or to another existing KII-compliant NURS or a sub-fund thereof (the ‘receiving KII-compliant NURS’); or

(c) one or more sub-funds of a KII-compliant NURS, which continue to exist until the liabilities have been discharged, transfer their net assets to another sub-fund of the same non-UCITS retail scheme (the ‘receiving KII-compliant NURS’);

only the past performance of the receiving KII-compliant NURS shall be maintained in the NURS-KII document.

SECTION 5

Practical information and cross-references

Article 20

Content of ‘practical information’ section
1. The ‘Practical information’ section of the NURS-KII document shall contain the following information relevant to investors in every Member State in which the KII-compliant NURS is marketed:

(a) the name of the depositary;

(b) where and how to obtain further information about the KII-compliant NURS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax legislation of the United Kingdom may have an impact on the personal tax position of the investor;

(e) [deleted]

2. Where the NURS-KII document is prepared for a KII-compliant NURS sub-fund, the ‘Practical information’ section shall include the information specified in Article 25(2) including on investors’ rights to switch between sub-funds.

3. Where applicable, the ‘Practical information’ section of the NURS-KII document shall state the information required about available classes in accordance with Article 26.

**Article 21**

**Use of cross-references to other sources of information**

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the NURS-KII document, provided that all information fundamental to the investors’ understanding of the essential elements of the investment is included in the NURS-KII document itself.

Cross-references shall be permitted to the website of the KII-compliant NURS or the authorised fund manager, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the NURS-KII document but they shall be kept to a minimum.

**SECTION 6**

**Review and revision of the NURS-KII document**

**Article 22**

**Review of key investor information**

1. An authorised fund manager or ICVC shall ensure that a review of key investor information is carried out at least every twelve months.
2. A review shall be carried out prior to any proposed change to the prospectus or the instrument constituting the fund where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the NURS-KII document.

**Article 23**

**Publication of the revised version**

1. Where a review referred to in Article 22 indicates that changes need to be made to the NURS-KII document, its revised version shall be made available promptly.

2. Where a change to the NURS-KII document was the expected result of a decision by the authorised fund manager, including changes to the prospectus or instrument constituting the fund of the ICVC, the revised version of the NURS-KII document shall be made available before the change comes into effect.

3. A NURS-KII document with duly revised presentation of past performance of the KII-compliant NURS shall be made available no later than 35 business days after 31 December each year.

**Article 24**

**Material changes to the charging structure**

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the authorised fund manager shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the KII-compliant NURS in future.

This change of basis shall be disclosed through the following statement:

‘The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The KII-compliant NURS’ annual report for each financial year will include detail on the exact charges made.’
2. Each NURS-KII document referred to in paragraph 1 shall indicate within the ‘practical information’ section the following information:

(a) that the NURS-KII document describes a sub-fund of a KII-compliant NURS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire KII-compliant NURS named at the beginning of the NURS-KII document;

(b) whether or not the assets and liabilities of each sub-fund are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one sub-fund for units in another sub-fund, and if so, where to obtain information about how to exercise that right.

3. Where the authorised fund manager sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the ‘Charges’ section of the NURS-KII document.

SECTION 2

Classes of units

Article 26

NURS-KII document for classes of units

1. Where a KII-compliant NURS consists of more than one class of units, the NURS-KII document shall be prepared for each class of units.

2. The key investor information pertinent to two or more classes of the same KII-compliant NURS may be combined into a single NURS-KII document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The authorised fund manager may select a class to represent one or more other classes of the KII-compliant NURS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the ‘Risk and reward profile’ section of the NURS-KII document shall contain the explanation of material risk applicable to any of the other classes being represented. A NURS-KII document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The authorised fund manager shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the ‘Practical information’ section of the NURS-KII document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the KII-compliant NURS’ prospectus.
That section shall also indicate where investors can obtain information about the other classes of the KII-compliant NURS that are marketed.

SECTION 3
Fund of funds

Article 28

Objectives and investment policy section

Where the KII-compliant NURS invests a substantial proportion of its assets in other collective investment schemes as referred to in COLL 5.6.10R (‘second schemes’), the description of the objectives and investment policy of that KII-compliant NURS in the NURS-KII document shall include a brief explanation of how the other second schemes are to be selected on an on-going basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each ‘second scheme’ (within the meaning of COLL 5.6.10R), to the extent that these are likely to be material to the KII-compliant NURS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that KII-compliant NURS will itself incur as an investor in the ‘second scheme’ (within the meaning of COLL 5.6.10R). Specifically, any entry and exit charges and ongoing charges levied by the second scheme shall be reflected in the KII-compliant NURS’ calculation of its own ongoing charges figure.

SECTION 4
Feeder KII-compliant NURS

Article 31

Objectives and investment policy section

1. The NURS-KII document for a feeder NURS shall contain, in the description of objectives and investment policy, information about the proportion of the feeder NURS’ assets which is invested in the qualifying master scheme.

2. There shall also be a description of the qualifying master scheme’s objectives and investment policy, supplemented as appropriate by either of the following:

(i) an indication that the feeder NURS’ investment returns will be very similar to those of the qualifying master scheme; or

(ii) an explanation of how and why the investment returns of the feeder NURS and qualifying master scheme may differ.

Article 32
Risk and reward profile section

1. Where the risk and reward profile of the feeder NURS differs in any material respect from that of the qualifying master scheme, this fact and the reason for it shall be explained in the ‘Risk and reward profile’ section of the NURS-KII document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the qualifying master scheme and feeder NURS shall be explained in the ‘Risk and reward profile’ section of the NURS-KII document.

Article 33

Charges section

The ‘Charges’ section of the NURS-KII document shall cover both the costs of investing in the feeder NURS and any costs and expenses that the qualifying master scheme may charge to the feeder NURS.

In addition, it shall combine the costs of both the feeder NURS and the qualifying master scheme in the ongoing charges figure for the feeder NURS.

Article 34

Practical information section

1. The NURS-KII document for a feeder NURS shall contain in the ‘Practical information’ section information specific to the feeder NURS.

2. The information referred to in paragraph 1 shall include:

(a) a statement that the qualifying master scheme's prospectus, NURS-KII document, and periodic reports and accounts are available to investors of the feeder NURS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery;

(c) where the qualifying master scheme is established in a different Member State to the feeder NURS, and this may affect the feeder NURS’ tax treatment, a statement to this effect.

3. The statement referred to in paragraph 2(a) may refer to the nearest equivalent disclosure document for a qualifying master scheme which does not issue a NURS-KII document.

Article 35

Past performance

1. The past performance presentation in the NURS-KII document of the feeder NURS shall be specific to the feeder NURS, and shall not reproduce the performance record of the qualifying master scheme.

2. Paragraph 1 shall not apply:
(a) where a feeder NURS shows the past performance of its qualifying master scheme as a benchmark; or

(b) where the feeder NURS was launched at a later date than the qualifying master scheme, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder NURS existed, based on the past performance of the qualifying master scheme; or

(c) where the feeder NURS has a past performance record from before the date on which it began to operate as a feeder NURS, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured KII-compliant NURS

Article 36

Performance scenarios

1. The NURS-KII document for structured KII-compliant NURS shall not contain the ‘Past performance’ section.

For the purposes of this Section, structured KII-compliant NURS shall be understood as KII-compliant NURS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or KII-compliant NURS with similar features.

2. For structured KII-compliant NURS, the ‘Objectives and investment policy’ section of the NURS-KII document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the KII-compliant NURS’ potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the KII-compliant NURS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not
represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The NURS-KII document for structured KII-compliant NURS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a NURS-KII document in a durable medium other than paper or by means of a website

1. Where, the NURS-KII document is to be provided to investors using a durable medium other than paper the following conditions shall be met:

(a) the provision of the NURS-KII document using such a durable medium is appropriate to the context in which the business between the authorised fund manager and the investor is, or is to be, carried on; and

(b) the person to whom the NURS-KII document is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the NURS-KII document is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the authorised fund manager and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the authorised fund manager and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.
FINAL PROVISIONS

Article 39

Entry into force

[deleted]

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.

2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.

3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.

4. The category into which the KII-compliant NURS falls shall be prominently indicated.

5. No colours shall be used for distinguishing between items on the scale.

ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way:

<table>
<thead>
<tr>
<th>One-off charges taken before or after you invest</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry charge</td>
<td>[ ] %</td>
</tr>
<tr>
<td>Exit charge</td>
<td>[ ] %</td>
</tr>
</tbody>
</table>

This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]

Charges taken from the fund over a year

<table>
<thead>
<tr>
<th>Ongoing charge</th>
<th>[ ] %</th>
</tr>
</thead>
</table>

Charges taken from the fund under certain specific conditions

<table>
<thead>
<tr>
<th>Performance fee</th>
<th>[ ] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]</th>
</tr>
</thead>
</table>

- A percentage amount shall be indicated for each of these charges.

- In the case of a performance fee, the amount charged in the fund’s last financial year shall be included as a percentage figure.

ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

The bar chart presenting past performance shall comply with the following criteria:
1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;

3. the X-axis shall be set at the level of 0% performance;

4. a label shall be added to each bar indicating the return in percentage that was achieved;

5. past performance figures shall be rounded to one decimal place.
## COLT TP 1
### Transitional Provisions

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
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</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Hand-book provision: coming into force</td>
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<td>(2)</td>
<td>Extra time provisions</td>
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<td>(3)</td>
<td>Existing schemes electing to comply with COLL</td>
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<td>(6)</td>
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</tr>
</tbody>
</table>

1. Each and every rule in COLL  
   R Expired

1A. Each and every rule in COLL  
   R The rules in COLL do not apply to any relevant party in relation to an authorised fund where the winding up of the fund has commenced before 12 February 2007, provided that each relevant party shall continue to comply with the provisions of CIS as if they still applied to them.  
   From 12 February 2007  12 February 2007

2. Each and every rule in COLL  
   G Expired

3. Each and every rule in COLL  
   R Expired

4. Each and every rule in COLL  
   G Expired

5. COLL 6.9.9 R (4) to (6) (Restrictions of business for UCITS management companies)  
   R Expired

6. COLL 6.9.9 R (4) to (6) (Restrictions of business for UCITS management companies)  
   G Expired
| Material to which the transitional provision applies | Transitional provision | Hand- 
book provision: coming into force |
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>COLL 6.6.15 (2), (4) and (5) (Committees and delegation)</td>
<td>R Expired</td>
<td></td>
</tr>
<tr>
<td>COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5 R (Valuation) and COLL 4.2.5 R 16 (Table: contents of the prospectus)</td>
<td>Expired</td>
<td></td>
</tr>
<tr>
<td>COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5 R (Valuation) and COLL 4.2.5 R 16 (Table: contents of the prospectus)</td>
<td>Expired</td>
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<tr>
<td>F E E S 3.2.1 R</td>
<td>R Expired</td>
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<tr>
<td>COLL 10.2.1 R</td>
<td>R Expired</td>
<td></td>
</tr>
<tr>
<td>COLL 4.2.5 R</td>
<td>R Expired</td>
<td></td>
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<tr>
<td>Amendments to COLL made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other Amendments) Instrument 2008</td>
<td>(1) [expired]</td>
<td>(2) [expired]</td>
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<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
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</tbody>
</table>
| 15  | Amendments to COLL 5.6.3R made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009 | **R** | Expired | | }
| 16  | COLL 4.5 and COLL 8.3.5R to COLL 8.3.5E R | **R** | Expired | | }
| 17  | COLL 4.5.5R (1)(a)(iv) and COLL 4.5.9R (9A) | **R** | Expired | | }
| Note: article 118(2) of the **UCITS Directive** | | | | | }
| 18  | Each and every rule in COLL that relates to key investor information | **R** | Expired | | }
| 19  | COLL 4.4.12R | **R** | Expired | | }
| 20  | COLL 4.4.12R | **G** | Expired | | }
|     | COLL 4.4.13R | | | | }
|     | COLL 7.7.19R | | | | }
|     | COLL 4.4.12R | | | | }
|     | COLL 4.4.13R | | | | }
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<th>(2) COLL 4.2.5R (3)(qa)</th>
<th>(3) Transitional provision</th>
<th>(4) Expired</th>
<th>(5) Hand-(\text{book provision: coming into force})</th>
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<td>(21)</td>
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<td>R</td>
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<td>(22)</td>
<td>COLL 4.6.8R(8)(d)</td>
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<td>Expired</td>
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<td>(23)</td>
<td>COLL 5.9.3 R and COLL 5.9.5 R</td>
<td>R</td>
<td>Expired</td>
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<td>(24)</td>
<td>COLL 8.3.4R (6)</td>
<td>R</td>
<td>Expired</td>
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<td>(25)</td>
<td>COLL 3 to COLL 8</td>
<td>R</td>
<td>Expired</td>
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<tr>
<td>(26)</td>
<td>COLL 3 to COLL 8</td>
<td>D</td>
<td>Expired</td>
<td></td>
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<tr>
<td>(27)</td>
<td>COLL 3 to COLL 8</td>
<td>G</td>
<td>Expired</td>
<td></td>
</tr>
<tr>
<td>(28)</td>
<td>COLL 4.2.5 R(3)(ca)</td>
<td>R</td>
<td>[expired]</td>
<td></td>
</tr>
<tr>
<td>(29)</td>
<td>Amendments to each and every rule in COLL made by the Collective Investment Schemes (Accounting Amendments) (No 2) Instrument 2015</td>
<td>R</td>
<td>[expired]</td>
<td></td>
</tr>
<tr>
<td>(30)</td>
<td>Amendments to each and every rule in COLL made by the Collective Investment Schemes (Accounting Amendments) (No 2) Instrument 2015</td>
<td>R</td>
<td>[expired]</td>
<td></td>
</tr>
<tr>
<td>(31)</td>
<td>COLL 4.2.5R(8)(f), (g) and (h), and COLL 4.2.5R(28)</td>
<td>R</td>
<td>[expired]</td>
<td></td>
</tr>
<tr>
<td>(32)</td>
<td>COLL 4.2.5R(8)(f) and (g)(i) and (ii)</td>
<td>R</td>
<td>(1) The authorised fund manager of a non-UCITS retail scheme need not, for any prospectus issued before 18 March 2016, comply with COLL 4.2.5R(8)(f), (g)(i) and (ii). From 18 March 2016 until 31 March 2016</td>
<td>1 March 2015 until 6 years from the date the relevant election takes place</td>
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<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
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<tr>
<td>33</td>
<td>COLL 4.5.7R(7)</td>
<td>R</td>
<td>(2) The prospectus must, however, contain a description of the depositary’s principal business activity.</td>
<td>March 2017</td>
</tr>
<tr>
<td>34</td>
<td>COLL 4.7.2R(4)(a) and (6A)</td>
<td>R</td>
<td>(1) Paragraph (2) applies to any key investor information document drawn up by an authorised fund manager before 18 March 2016. (2) The authorised fund manager need not amend the key investor information document until it is revised as a result of a subsequent revision of the key investor information falling after 18 March 2016, and only if the information required by COLL 4.7.2R(4)(a) and (6A) is available to the authorised fund manager at the time of that revision.</td>
<td>From 18 March 2016 until 18 March 2017</td>
</tr>
<tr>
<td>35</td>
<td>The changes set out in Annex F of the UCITS V Directive Instrument 2016 to COLL 6.6.4R(6) and (7), COLL 6 Annex 1R and COLL 12.3.4R(1)</td>
<td>R</td>
<td>The changes to the COLL provisions in column (2) do not apply to an EEA UCITS management company in respect of a UCITS scheme managed by it and the provisions continue to apply as they were in force at 17 March 2016.</td>
<td>18 March 2016 until the earlier of: (1) the date of application of the UCITS level 2 regulation; and (2) the date the EEA UCITS management company enters into a depositary agreement in respect of the scheme that is compliant with the terms of the UCITS level 2 regulation</td>
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<td></td>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Trans-</td>
<td>Handbook provision: coming into force</td>
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<tr>
<td>(1)</td>
<td>COLL 6.6A.8R</td>
<td>A management company may continue to retain a depositary that does not meet the requirements in COLL 6.6A.8R if the depositary was appointed before 18 March 2016.</td>
<td>From 18 March 2016 until 18 March 2018</td>
<td>18 March 2016</td>
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<tr>
<td>(2)</td>
<td>COLL 6.6B.8R and COLL 6.6B.11R</td>
<td>A depositary that does not meet the requirements in COLL 6.6B.8R and COLL 6.6B.11R may continue to act as depositary of a UCITS scheme if it was appointed before 18 March 2016.</td>
<td>From 18 March 2016 until 18 March 2018</td>
<td>18 March 2016</td>
</tr>
<tr>
<td>(3)</td>
<td>COLL 4.2.5AG</td>
<td>An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme does not need to comply with the provisions of the Securities Financing Transactions Regulation referred to in COLL 4.2.5AG for:</td>
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<td></td>
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<td>(1)a sub-fund that was constituted before 12 January 2016 if the scheme is an umbrella; and (2)a scheme that was constituted before 12 January 2016, if the scheme is not an umbrella.</td>
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<td>[Note: article 33(2)(c) of the Securities Financing Transactions Regulation]</td>
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<tr>
<td>(4)</td>
<td>COLL 8.3.4AG</td>
<td>An authorised fund manager of a qualified investor scheme does not need to comply with the provisions of the Securities Financing Transactions Regulation referred to in COLL 8.3.4AG for:</td>
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<tr>
<td></td>
<td></td>
<td>(1)a sub-fund that was constituted before 12 January 2016 if the scheme is an umbrella; and (2)a scheme that was constituted before 12 January 2016, if the scheme is not an umbrella.</td>
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<td>[Note: article 33(2)(c) of the Securities Financing Transactions Regulation]</td>
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<tr>
<td>(5)</td>
<td>COLL 3.2.6R(8) and COLL 5.2.12R(3)(d)</td>
<td>An authorised fund manager is not required to update existing statements in the instrument constituting the fund concerning use of the derogation at COLL 5.2.12R(3) due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes: (a) COLL 3.2.6R(8) and (b) COLL 5.2.12R (3)(d).</td>
<td>From 1 October 2016 to 30 September 2019</td>
<td>From 1 October 2016</td>
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<td>(4)</td>
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<tr>
<td>41</td>
<td>COLL 3.2.6R(15)</td>
<td>R</td>
<td>An authorised fund manager is not required to update the instrument constituting the fund due to the amendment to COLL 3.2.6R(15) until it is updated for other purposes.</td>
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<td>From 1 October 2016 to 30 September 2019</td>
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<tr>
<td>42</td>
<td>COLL 4.2.5R(3)(i) and COLL 5.2.12R(3)(d).</td>
<td>R</td>
<td>An authorised fund manager is not required to update existing statements in the prospectus concerning use of the derogation under COLL 5.2.12R(3) due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</td>
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<td></td>
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<td></td>
<td>(a) COLL 4.2.5R(3)(i) (subject to COLL TP1.1 (43)) and COLL 5.2.12R(3)(d).</td>
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<td>From 1 October 2016 to 30 September 2017</td>
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<tr>
<td>43</td>
<td>COLL 4.2.5R(3)(i), COLL 5.6.7R(1), COLL 5.6.8R, and COLL 5.7.5R</td>
<td>R</td>
<td>An authorised fund manager of a non-UCITS retail scheme is not required to comply with the amendments to the rules in column (2) in relation to government and public securities made by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016.</td>
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<td>From 1 October 2016 to 30 September 2017</td>
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<tr>
<td>44</td>
<td>COLL 4.2.2R, COLL 4.2.5R, and COLL 4.2.6G.</td>
<td>R</td>
<td>An authorised fund manager is not required to update the prospectus due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</td>
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<td>(a) COLL 4.2.2R(2)(aa)</td>
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<td>(b) COLL 4.2.5R(2)(aa);</td>
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<td>(c) COLL 4.2.5R(2B)(b);</td>
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<td>(d) COLL 4.2.5R(5)(b);</td>
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<td>(e) COLL 4.2.5R(16)(b)(v);</td>
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<td></td>
<td>(f) COLL 4.2.5R(18)(b)(i);</td>
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<td>(g) COLL 4.2.5R(19);</td>
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<td>(h) COLL 4.2.5R(20); and</td>
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<td></td>
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<td>(i) COLL 4.2.6G(7)(a).</td>
<td></td>
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<tr>
<td>45</td>
<td>COLL 8.3.2R and COLL 8.3.4R</td>
<td>R</td>
<td>An authorised fund manager is not required to update the prospectus due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</td>
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<td>(b) COLL 8.3.4R(2)(1A);</td>
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<td>Transitional provision</td>
<td>Handbook provision: dates in force</td>
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<td>1</td>
<td>(2)</td>
<td>(c) COLL 8.3.4R(14)(3); and</td>
<td>From 1 January 2018 until 19 February 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) COLL 8.3.4R(17)(6).</td>
<td>1 January 2018</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>The rules and guidance in COLL that relate to a NURS-KII document.</td>
<td>An authorised fund manager of a non-UCITS retail scheme and an ICVC that is a non-UCITS retail scheme may comply with the provisions in column (2) using a key investor information document (as modified by a general direction from the FCA) created before 1 January 2018 if it:</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>(1) had dispensation from the FCA through a modification by consent to market units of the non-UCITS retail scheme using that document until 1 January 2018; and</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>(2) decides to draw up a NURS-KII document, instead of a key information document, in accordance with COLL 4.7 after 1 January 2018.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>COLL 4.3.4R(2); COLL 4.3.6R(2); COLL 8.3.6R(1) and (2)</td>
<td>A new type of payment out of scheme property, which is introduced by a firm to facilitate the operation of a research payment account under COBS 2.3B.3R(2), does not constitute a fundamental change under COLL 4.3.4R(2) or COLL 8.3.6R(1) requiring prior approval by meeting. Such a change will however constitute a significant change under COLL 4.3.6R(2) and COLL 8.3.6R(2) requiring pre-event notification.</td>
<td>From 3 January 2018 until 3 January 2020</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>COLL 4.5.7R(8) and (9) and COLL 8.3.5AR(5) and (6)</td>
<td>An authorised fund manager is not required to include the information prescribed by COLL 4.5.7R(8) and (9) or COLL 8.3.5AR(5) and (6) in its annual long report or in a composite report in respect of any annual accounting period ending before 30 September 2019.</td>
<td>From 30 September 2019 to 30 September 2019</td>
<td></td>
</tr>
</tbody>
</table>

Amendments to COLL made by the Money Market Funds Regulation Instrument 2018

<p>| | | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>48</td>
<td>Each and every rule in COLL amended or deleted by the Money Market Funds Regulation Instrument 2018</td>
<td>A scheme which satisfies the conditions in either COLL 5.9.3R or COLL 5.9.5R immediately before 21 July 2018, and in respect of which an application for authorisation as a regulated money market fund needs to be submitted by 21 January 2019 in accordance with article 44 of the Money Market Funds Regulation, shall continue to comply with the provisions of the COLL sourcebook that apply to it, or in relation to it, as at 20 July 2018 until such time as it is a regulated money market fund.</td>
<td>From 21 July 2018 to 21 March 2019</td>
</tr>
</tbody>
</table>

Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019

<p>| | | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>COLL 4.2.5R(3)(c-b), (c-a) and (o), and COLL 4.2.6G(1A)</td>
<td>The rules and guidance specified in column (2) apply:</td>
<td>From 7 May 2019 to 7 August 2019</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) from 7 May 2019 in respect of any authorised fund which is authorised on or after that date; and</td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>Material to which the transitional provision applies</td>
<td>(3)</td>
<td>Transitional provision</td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------------------------------</td>
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<td>----------------------</td>
</tr>
<tr>
<td>(2)</td>
<td>from 7 August 2019 in respect of any authorised fund which is authorised before 7 May 2019.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Amendments made by the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020

50 COLL 9.3.5D D COLL 9.3.5D applies from the first date on which the scheme’s annual report and accounts is (or is due to be) published on or after 1 July 2020. From 1 July 2020 1 July 2020


51 COLL 5.2.23R(1) R [For the purpose of the rule specified in column (2),] an approved counterparty includes:

(a) a person who, as a result of its authorisation in an EEA State, can enter into the transaction as principal off-exchange;

(b) a CCP that is authorised in that capacity for the purpose of EU EMIR as it had effect immediately before IP completion day; and

(c) a CCP that is recognised in that capacity in accordance with the process set out in article 25 of EU EMIR as it had effect immediately before IP completion day. [IP completion day to 31 December [2023]] [Date of coming into force of the instrument]

Amendments made by the Collective Investment Schemes Sourcebook (Bearer Certificates) Instrument 2021

52 TP 1.1(53)R to (54)G R In TP 1.1(53)R and 1.1(54)R, “outstanding bearer share” and “the surrender year” have the meanings given in the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346). From 30 April 2021 to the end of 1 January 2022 30 April 2021

53 COLL 3.2.6R; COLL 4.4.4R; and COLL 4.4.12R R (1)This rule applies to an ICVC which has one or more outstanding bearer shares in issue during the surrender year.

(2)If immediately before 2 January 2021 the instrument constituting the fund contained a statement pursuant to COLL 3.2.6R setting out how the holders of bearer certificates are to identify themselves, the arrangements specified in that statement continue to apply to the extent necessary during the surrender year subject to:

(a) the OEIC Regulations; and

(b) any changes to those arrangements made in accordance with the Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346), the OEIC Regulations, the rules, the instrument constituting the fund and the prospectus.

(3) Any procedures identified in the prospectus in relation to the operation of bearer certificates pur-
### Transitional Provisions

<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Handbook provision dates in force</th>
</tr>
</thead>
<tbody>
<tr>
<td>suant to COLL 4.2.5R(5) continue to apply to outstanding bearer shares during the surrender year subject to: (a) the OEIC Regulations; and (b) any changes to that operation made in accordance with the Bearer Certificates (Collective Investment Schemes) Regulations 2020, the OEIC Regulations, the rules, the instrument constituting the fund and the prospectus.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to the provisions of the Bearer Certificates (Collective Investment Schemes) Regulations 2020 and the OEIC Regulations, the amendments made to COLL 4.4.4R(3) and COLL 4.4.12R(1) are to be disregarded in relation to outstanding bearer shares in issue during the surrender year.</td>
<td>From 30 April 2021</td>
<td>30 April 2021</td>
</tr>
<tr>
<td>Schemes which issue bearer certificates create significant risks in relation to money laundering and financial crime. These risks are relevant both to the protection of participants in such schemes and to the constitution and management arrangements for a scheme. Paragraph (3) applies where a scheme which is recognised under section 272 of the Act either issues or has issued bearer certificates to participants in the United Kingdom that have not been cancelled on or before 1 January 2022. The FCA is of the view that a scheme within (2) is unlikely to satisfy the requirements for recognition set out in section 272 of the Act or, alternatively, that it is unlikely to be desirable in the interests of the participants in the scheme for the scheme to continue to be recognised. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing required the Member States of the European Union to take measures to prevent the misuse of bearer shares. As such, the FCA expects most schemes and sub-funds which are temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019 and the operators of such schemes or sub-funds to be subject to relevant national measures implementing the Directive.</td>
<td>From 30 April 2021</td>
<td>30 April 2021</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
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</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision applies to:</td>
<td>Transitional provision: coming into force</td>
</tr>
<tr>
<td>Transitional provision</td>
<td>(1) Paragraphs (2) to (4) apply to:</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>(6)</td>
<td>(5)</td>
<td>(1)</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
<tr>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
<td>Transitional provision: coming into force</td>
<td>TP 1.1(55)G and COLL 9.4.4R</td>
</tr>
</tbody>
</table>
# Schedule 1
## Record keeping requirements

### Sch 1.1 G

1 Record keeping requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLL Transitional Provision 3</td>
<td>Election or re-vocation to comply with CIS</td>
<td>Details</td>
<td>At election or re-vocation</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL Transitional Provision 14</td>
<td>Election for early compliance with the instrument</td>
<td>Details</td>
<td>At election</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 4.4.11 R (5)</td>
<td>Minutes of meetings (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 6.2.5 R (1)</td>
<td>Issues and cancellations of units (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 6.4.6 R (4)</td>
<td>Instruments of Transfer (person responsible for the register)</td>
<td>Full details</td>
<td>From registration</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (1)</td>
<td>General record-keeping obligations (AFM)</td>
<td>Such as to demonstrate compliance with the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (2)</td>
<td>Units held, acquired or disposed of (AFM)</td>
<td>Daily record of units held, acquired or disposed of by the AFM</td>
<td>As implicit in rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (3)</td>
<td>Dilution record-keeping obligations (AFM)</td>
<td>How the AFM calculates and estimates dilution and its policy and method for determining the amount of any dilution levy or dilution adjustment</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.12 R (3)</td>
<td>General record-keeping obligations (depositary)</td>
<td>Such as to demonstrate compliance with the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
<tr>
<td>---------------------</td>
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</tr>
<tr>
<td>COLL 6.13.2 R</td>
<td>Portfolio transactions relating to a UCITS</td>
<td>Full details</td>
<td>After transaction</td>
<td>5 years</td>
</tr>
<tr>
<td>COLL 6.13.3 R</td>
<td>Subscription and redemption orders</td>
<td>Full details</td>
<td>After receipt of order</td>
<td>5 years</td>
</tr>
<tr>
<td>COLL 6.13.4 R</td>
<td>Records referred to in COLL 6.13.2 R and COLL 6.13.3 R</td>
<td>Full details</td>
<td>After termination of authorisation of UCITS management company</td>
<td>Outstanding term of 5 year period</td>
</tr>
<tr>
<td>COLL 7.8.4R(4)</td>
<td>The decision of the governing body of the authorised fund manager</td>
<td>The decision to create a side pocket class and the reasons for it</td>
<td>As implicit from the rules in COLL</td>
<td>5 years</td>
</tr>
<tr>
<td>COLL 8.3.8 R (2)</td>
<td>Minutes of meetings (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 8.5.2 R (3)(e)</td>
<td>General record keeping obligations (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 8.5.2 R (3)(f)</td>
<td>Units held, acquired or disposed of (AFM)</td>
<td>Daily record of units held, acquired or disposed of by the AFM</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 8.5.4 R (2)(h)</td>
<td>General record keeping obligation (depositary)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 8.5.10 R (4)</td>
<td>Issues and cancellations of units (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 14.3.6R</td>
<td>Dealing with an advisory committee</td>
<td>Details</td>
<td>As implicit from the rules in COLL</td>
<td>5 years</td>
</tr>
<tr>
<td>COLL 15.2.6R(3)</td>
<td>The depositary’s determination</td>
<td>The determination and the reasons for making it</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 15.5.12R(2)</td>
<td>Minutes of meetings (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 15.7.2R(3)(e)</td>
<td>General record keeping obligations (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 15.7.2R(3)(f)</td>
<td>Units held, acquired or disposed of (AFM)</td>
<td>Daily record of units held, acquired or disposed of by the AFM</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 15.7.6R(2)(g)</td>
<td>General record keeping obligation (depositary)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
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<td>Retention period</td>
</tr>
<tr>
<td>---------------------</td>
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</tr>
<tr>
<td>COLL 15.8.5R(4)</td>
<td><em>Issues and cancellations of units (AFM)</em></td>
<td>Full details</td>
<td>As implicit from the rules in <strong>COLL</strong></td>
<td>As implicit from the rules in <strong>COLL</strong></td>
</tr>
<tr>
<td>COLL TP 1.1.16</td>
<td>Election to comply with COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5D R as those rules were in force on 5 March 2010</td>
<td>Details</td>
<td>At election</td>
<td>6 years</td>
</tr>
</tbody>
</table>
Schedule 2
Notification requirements

Sch 2.1 G
This schedule sets out the notification requirements detailed in COLL in respect only of notifications to be provided to the FCA. These notification requirements, it should be noted, are in addition to the notifications which must be made to 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) and under regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company).

Sch 2.2 G
1 Notification requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLL 4.2.3 R (1)(b)</td>
<td>Prospectus and any revisions thereto</td>
<td>Copy provided</td>
<td>Marketing scheme</td>
<td>Before marketing begins</td>
</tr>
<tr>
<td>COLL 4.2.3A R (1)(b)</td>
<td>Copy of prospectus of the master UCITS</td>
<td>Full details, together with any amendments</td>
<td>On publication</td>
<td>Immediately on publication</td>
</tr>
<tr>
<td>COLL 4.2.3B R (1)</td>
<td>Prospectus of the qualifying master scheme of a feeder NURS</td>
<td>Copy provided</td>
<td>Upon request by the FCA</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 4.5.14 R (2)(d)</td>
<td>Annual and half yearly reports</td>
<td>Copy of report</td>
<td>End of annual or half-yearly accounting period</td>
<td>Immediately on publication</td>
</tr>
<tr>
<td>COLL 4.5.15 R (1)(b)</td>
<td>Copies of the annual and half-yearly long reports of the master UCITS</td>
<td>Full details</td>
<td>End of annual or half-yearly accounting period</td>
<td>Immediately on publication</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>---------------------</td>
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</tr>
<tr>
<td>COLL 4.5.16 R (1)</td>
<td>Annual and half-yearly long report (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of the qualifying master scheme of a feeder NURS</td>
<td>Copy provided</td>
<td>Upon request by the FCA</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 4.7.7 R (2)</td>
<td>Key investor information document</td>
<td>Full details, together with any amendments</td>
<td>On first use</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 4.7.7 R (3)</td>
<td>Key investor information document of the master UCITS</td>
<td>Full details, together with any amendments</td>
<td>On first use</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 6.5.3 R (5)</td>
<td>Change of ACD, directors or controller of ACD or a corporate director</td>
<td>Details</td>
<td>Occurrence</td>
<td>Immediate</td>
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<tr>
<td>COLL 6.6.7 R</td>
<td>Capital of ICVC</td>
<td>Details if capital: (a) falls below minimum or (b) exceeds maximum</td>
<td>Occurrence</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 6.9.11 R</td>
<td>Change to ICVC or to one of its officers</td>
<td>Details</td>
<td>Occurrence</td>
<td>14 days</td>
</tr>
<tr>
<td>COLL 6.12.3 R</td>
<td>Risk management process</td>
<td>Details in COLL 6.12.3 R (2)(a) and COLL 6.12.3 R (2)(b) and any material alterations thereof</td>
<td>On first use of process</td>
<td>On a regular basis and at least annually</td>
</tr>
<tr>
<td>COLL 6.12.6R(2)</td>
<td>Material change to the risk management process</td>
<td>Full details of change</td>
<td>On first use of amended process</td>
<td>Immediate</td>
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<tr>
<td>COLL 7.2.1 R (2) &amp; COLL 7.2.1R (5)</td>
<td>Suspension or resumption of dealing</td>
<td>Details including reason for suspension</td>
<td>Occurrence</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 7.3.5 R (5)</td>
<td>Winding up a solvent ICVC or terminating a solvent ICVC sub-fund (Directors)</td>
<td>Solvency statement</td>
<td>Winding up a solvent ICVC or ICVC sub-fund</td>
<td>Within 21 days of notice given under regulation 21 of OEIC Regulations</td>
</tr>
<tr>
<td>COLL 7.3.7 R (9)</td>
<td>Winding up a solvent ICVC or sub-fund of an ICVC (Depositary)</td>
<td>Completion of winding up or termination of a sub-fund</td>
<td>Winding up a solvent ICVC or ICVC sub-fund</td>
<td>As soon as reasonably practical after winding up completed</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
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Schedule 3
Fees and other required payments

Sch 3.1 G
The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Sch 3.2 G
The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4
Schedule 4
Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Sch 4.3 G
[deleted]
Schedule 5
Rights of action for damages

Sch 5.1 G

The table below sets out the rules in COLL contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed For private person, the rule may be actionable by a private person under section 138D unless a Yes appears in the column headed Removed. A Yes in the column headed Removed indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

1. any individual, except when acting in the course of carrying on a regulated activity; and
2. any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

Sch 5.2 G

1. Actions for damages: the New Collective Investment Schemes Sourcebook

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Schedule 6
Rules that can be waived

Sch 6.1 G

1. The rules in COLL can be waived by the FCA under sections 138A and 138B, 250 or 261L of the Act (Modification or waiver of rules) or regulation 7 of the OEIC Regulations (Modification or waiver of FCA rules), except COLL 3.2.8R (UCITS obligations) and COLL 6.9.9R (Restrictions of business for UCITS management companies).

Sch 6.2 G
[deleted]