

Chapter 11

Master-feeder arrangements for UCITS schemes

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1

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- (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 *depository* 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 provide that 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 *depository* 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*.

- 11.6.2** **R** **Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction**
- (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 *unitholders* 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*, *ACSSs* or *ICVCs*.

[Note: article 60(4) last sentence of the *UCITS Directive*]

- 11.6.3** **R** **Application for approval by a feeder UCITS where a master UCITS is wound up**
- 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

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- (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

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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

11.6.6

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- (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

11.6.7

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- (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, ■ 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 *UCITS implementing Directive No 2*]

Repurchase or redemption of units in a master UCITS

11.6.8

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Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *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.

11.6.9

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(1) Where:

- (a) the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ 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 *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 ■ 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

11.6.10

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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*]

11.6.11

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■ COLL 11.6.10 R gives effect to sections 283A(4), 252A(8) and 261S(8) of the *Act* and regulation 22A(4) of the *OEIC Regulations* which require the *FCA* to impose certain conditions when approving the re-investment of cash received from a *master UCITS* which has been wound up.

Requirements following approval by the FCA

11.6.12

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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 11.6.3 R (1) and ■ COLL 11.6.5 R (2), take the necessary measures to comply with the requirements of ■ COLL 4.8.3 R 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

11.6.13

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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*]