

Chapter 3

Constitution



3.3 Units

Application

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

Classes of units

- 3.3.2 G
- (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 G 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 R 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

R

- (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

R

A class hedging transaction must:

- (1) be undertaken in accordance with the requirements of ■ COLL 5 (Investment and borrowing powers); and

3.3.5B

G

- (2) (for the purposes of valuing *scheme property* and calculating the *price of units* in accordance with ■ COLL 6.3 (Valuation and pricing)) be attributed only to the *class of units* for which it is undertaken.

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 *depository* 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, *depository* 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

3.3.6

R

- (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

G

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

R

- (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

R

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 *depository*; 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

G

- (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*.