

Chapter 6

Operating duties and responsibilities

6.1 Introduction and Application

Application

6.1.1

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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 *depository* 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

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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

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- (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 *depository'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 *depository* 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

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- (1) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.

Purpose

6.2.2

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- (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 *depository* 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

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- (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 *depository* 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

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- (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

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- (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

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- (1) The *depository* 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 *depository* 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 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

6.2.6A

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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 *depository* 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

6.2.7

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- (1) The *authorised fund manager* may require, on agreement with the *depository*, or may permit, on the request of the investor, direct *issues* and *cancellations* of *units* by an *ICVC* or by the *depository* 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

6.2.8

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- (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 *depository* 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 *depository* for such purpose.

Controls over the issue and cancellation of units - guidance

6.2.9

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- (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 *depository* 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

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- (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 *depository* 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

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- (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 *depository'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

6.2.12

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Explanatory table: This table belongs to ■ COLL 6.2.2 G (4) (Purpose).

Correction of box management errors

1 Controls by authorised fund managers

An authorised fund manager needs to be able to demonstrate that it has effective controls over:

- (1) its calculations of what *units* are owned by it (its 'box'); and
- (2) compliance with COLL 6.2.8 R which is intended to prevent a negative box.

2 Controls by depositaries

- (1) Under COLL 6.6.4 (General duties of the depository), a *depository* 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).
- (2) A *depository* 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 *depository* 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.

3 Recording and reporting of box management errors

- (1) 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 *depository*, together with details of the action taken, or to be taken, to avoid repetition of the error.
- (2) A *depository* should report material box management errors to the *FCA* immediately. Materiality should be determined by taking into account a number of factors including:
 - (a) the implications of the error for the sufficiency of controls put into place by the *authorised fund manager*;
 - (b) the significance of any breakdown in the *authorised fund manager's* management controls or other checking procedures;
 - (c) the significance of any failure of systems or back-up arrangements;
 - (d) the duration of an error; and
 - (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.

- (3) A *depository* 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

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- (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 *depository* 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 *depository's* opinion, material to the *authorised fund*.

Payment for cancelled units

6.2.14

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- (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 *depository* of the *AUT* or *ACS* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* 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 *depository* 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 **R** The *depository* 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 **R** (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

6.2.17

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- (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

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- (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

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- (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

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The conditions for *limited redemption arrangements* in ■ COLL 6.2.19 R should be considered, for *AUTs* and *ACs* 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

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- (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

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- (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

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- (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").
- (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

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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

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- (1) Subject to (3) and (4), this section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.
- (2) ■ COLL 6.3.3A R to ■ COLL 6.3.3D R (Accounting procedures):
 - (a) apply to:
 - (i) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*; and
 - (ii) an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom*;

in addition to applying in accordance with (1); but
 - (b) do not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.
- (3) The following *rules and guidance* do not apply to an *authorised fund manager*, a *depository*, 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 *depository* of that *authorised fund* to the extent it is consistent with the requirements of the *Money Market Funds Regulation*.

Purpose

6.3.2

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- (1) 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

6.3.3

R

- (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

6.3.3A

R

- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure the employment of the accounting policies and procedures referred to in ■ SYSC 4.1.9 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* or a *UK UCITS management company* of an *EEA UCITS scheme* must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the *UCITS Home State*, 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* or a *UK UCITS management company* of an *EEA 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 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 *depository*.

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.

Valuation and pricing guidance

6.3.6 G Table: This table belongs to ■ COLL 6.3.2 G (2) (a) and ■ COLL 6.3.3 R (Valuation).

Valuation and pricing	
1	The valuation of scheme property
(1)	Where possible, <i>investments</i> should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.
(2)	For some or all of the <i>investments</i> comprising the <i>scheme property</i> , different prices may be quoted according to whether they are being bought (<i>offer prices</i>) or sold (<i>bid prices</i>). The valuation of a <i>single-priced authorised fund</i> should reflect the mid-market value of such <i>investments</i> . In the case of a <i>dual-priced authorised fund</i> , the <i>issue</i> basis of the valuation will be carried out by reference to the <i>offer prices</i> of <i>investments</i> and the <i>cancellation</i> basis by reference to the <i>bid prices</i> of those same <i>investments</i> . The <i>prospectus</i> should explain how <i>investments</i> will be valued for which a single <i>price</i> is quoted for both buying and selling.
(2A)	<i>Schemes</i> investing in <i>approved money-market instruments</i> should value such instruments on an amortised cost basis on condition that: <ul style="list-style-type: none"> (a) the <i>approved money-market instrument</i> has a residual maturity of less than three months and has no spe-

cific sensitivity to market parameters, including credit risk; or
(b) the *scheme* is a *qualifying money market fund*.

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

(2B) [deleted]

(3) 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).

(4) 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.

(5) 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*
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 *depository* 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, the *authorised fund manager* should consult and agree with the *standing independent valuer* a fair and reasonable value for the immovable.
- (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 *depository*.
 - (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 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 *depository* 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 *depository* that the breach is of minimal significance.
- (2) A *depository* may consider that the instance of incorrect *pricing* is of minimal significance if:
 (a) the *authorised fund manager* and *depository* 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 *depository* 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 *depository* should satisfy itself that any payments required following an instance of incorrect *pricing* are accurately and promptly calculated and paid.
- (6) If a *depository* considers that reimbursement or payment is inappropriate, it should report the matter to the FCA, together with its recommendation and justification. The *depository* 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 *depository* to be immaterial, need not normally be paid.

6.3.7 **R** [deleted]

Dilution

6.3.8 **R** (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 *depository* 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 *depository* with the amount or rate of any *dilution adjustment* made to the *price* or any *dilution levy* applied.

Forward pricing

6.3.9

R

(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.*

6.3.10 **G** [deleted]

Publication of prices

6.3.11 **R** Where the *authorised fund manager* is prepared to *deal* in *units*, or is willing to *issue* or *cancel units*, under ■ COLL 6.2.7, it must make the *dealing prices* public in an appropriate manner.

Manner of price publication

- 6.3.12 **G**
- (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 **R** 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

G

The *authorised fund manager* should advise the *depository* 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 *depository* designed to stabilise the value of the *scheme* in these events.



6.4 Title and registers

Application

6.4.1

R

- (1) This section applies to an *authorised fund manager* and a *depository* of an *AUT* or *ACS*.
- (2) ■ COLL 6.4.9 (Plan registers) also applies to the *ACD*, any other *director* and the *depository* of an *ICVC*.

Purpose

6.4.2

G

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

G

- (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 *depository* 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

6.4.4

R

- (1) Either:
 - (a) the *manager* or the *trustee* (as nominated in the *trust deed*); or
 - (b) the *authorised contractual scheme manager* or the *depository* 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 *depository* 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 *depository*, 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 *depository*, as appropriate.

The authorised fund manager as unitholder

6.4.5

R

- (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

R

- (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 transferor 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

R

- (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) (*ACS*s: *UCITS* and *NURS* transfer of units) and ■ COLL 4.2.5 R(5B) (*ACS*s: *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

G

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

R

- (1) Following the *sale* of *units* or as a result of ■ COLL 6.4.6 R (Transfer of units by act of parties: *AUT*s and *ACS*s) 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 *AUT*s or *ACS*s.

Conversion of units

6.4.8

R

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

6.4.9

R

- (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 **R** This section applies in accordance with **COLL 6.5.2 R** (Table of application).

6.5.2 **R** Table of application
This table belongs to **COLL 6.5.1 R**.

Rule	ICVC	ACD	Any other director of an ICVC	Depositary of an ICVC	Authorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
6.5.1R	x	x	x	x	x	x
6.5.3R	x	x	x	x		
6.5.4R		x	x	x		
6.5.5R		x	x			
6.5.6R	x			x		
6.5.7R					x	x
6.5.8R					x	x
6.5.9R					x	x
6.5.10R		x		x	x	x

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

6.5.2A **G** **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 **R**
- (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

6.5.4

R

- (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 *depository* 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

R

- (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

R

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 ■ COLL 6.6.3 R (1) (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

R

- (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

6.5.8

R

- (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

performance of its duties as the *authorised fund manager* of the *AUT* or *ACS*.

- (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

6.5.9

R

- (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

6.5.10

R

- (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 **R**

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 6.6.3R** and **COLL 6.6.14R** 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 **R**

This table belongs to **COLL 6.6.1 R**.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
6.6.1R	x	x	x	x	x	x
6.6.3R	x	x		x	x	x
6.6.3AR*					x	
6.6.3BR*					x	
6.6.4R				x		x
6.6.5R		x	x	x	x	x
6.6.5AR*		x			x	
6.6.5BG*		x			x	
6.6.6R		x			x	
6.6.7R	x	x				
6.6.8R					x	x
6.6.9R					x	x
6.6.10R		x		x	x	x
6.6.11G				x		x
6.6.12R				x		x

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Au- thorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
6.6.13R		x	x	x	x	x
6.6.14R		x		x	x	x
6.6.15R	x	x	x	x		x
6.6.15AR*		x			x	
6.6.16G		x		x	x	x
6.6.17R		x	x	x	x	x
6.6.18G		x	x	x	x	x
Notes:	(1)	"x" means "applies", but not every paragraph in every rule will necessarily apply.				
	(2)	* COLL 6.6.3A R and COLL 6.6.3B R only apply to authorised contractual scheme managers of ACSs.				
	(3)	* COLL 6.6.5A R and COLL 6.6.5B G only apply to ACDs of ICVCs which are umbrellas and authorised contractual scheme managers of co-ownership schemes which are umbrellas.				
	(4)	* COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).				

Functions of the authorised fund manager

6.6.3

R

- (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 *depository* 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 *depository* of the *AUT* or *ACS*; or
 - (v) by the *depository* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*.
- (4) Rectification under (3)(c) need not, unless the *depository* so directs, extend to any such reimbursement or payment where it appears to the *depository* 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).

General duties of the depository

6.6.4

R

- (1) The *depository* 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 *depository* 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 *depository*, when acting in its capacity as *depository*, must act solely in the interests of the *unitholders*.
- (4) The *depository*:
- (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 G [deleted]

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.

6.6.5B **G** 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

- 6.6.6 **R** (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

6.6.6A

R

- 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 *depository* immediately supply it with such information concerning the management and administration of the *authorised fund* as the *depository* may reasonably require.
- (1) This section applies to:
 - (a) an *authorised fund manager* of a UCITS scheme, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a UCITS scheme; and
 - (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.
 - (2) ■ COLL 6.6A.6 R ((Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).
 - (3) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a UCITS scheme under the freedom to provide *cross border services*.

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 *depository*, 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 *depository*.
- (3) The *authorised fund manager* of an *AUT* or *ACS* may, with the approval of the *depository*, 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 *depository* for the acquisition or disposal of immovable property.
- (3) Where the *depository* is of the opinion that a deal in property is not within the *rules* in this sourcebook and the *instrument constituting the fund*, the *depository* 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 *depository* 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 *depository*; and
 - (b) the *depository* 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 *depository* 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 *depository* becomes aware of whilst undertaking its functions or duties in ■ COLL 6.6.4 R (1) (General duties of the *depository*) that the *FCA* would reasonably view as significant.

Control by the depository over the scheme property

6.6.12 **R**

- (1) The *depository* 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 *depository*, its nominee or a *person* retained by it under ■ COLL 6.6.15 R (1) (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

6.6.13

R

- (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 *depository*.
- (2) The *depository* is responsible for the collection of income due to be paid for the account of the *authorised fund*.
- (3) The *depository* 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.

Exercise of rights in respect of the scheme property.....

- (1) The *depository* 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 *depository* 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 depository 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 *depository*; 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 *depository* or the *authorised fund manager*.

- (4) Immediately upon the *depository* 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 5.6.13R (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

6.6.15

R

- (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 *depository* 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 *depository* 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 *depository* 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 *depository*.
- (5) Where a *depository* 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* (other than an *EEA UCITS management company*) of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme*;
 - (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*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.

- (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 *depository*; 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 *EEA 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

6.6.16

G

- (1) *Directors* of an *ICVC*, *authorised fund managers* and *depositories* 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.

6.6.17

R

- (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 of the kind referred to in article 102(3) of the *UCITS Directive* with the relevant *overseas regulator*.
- (4) ■ COLL 6.6B sets out the *FCA's rules and guidance* that apply to a *depository* of a *UCITS scheme* seeking to delegate any of its functions.

Conflicts of interest

- (1) The *authorised fund manager*, any other *director* of an *ICVC* and the *depository* 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 *depository* 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 *depository* 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 *depository* 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 *depository* as:
 - (i) independent of any *affected person*; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the *depository* 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 *depository* 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

G

- (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.



6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

6.6A.1

R

- (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*; and
 - (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.
- (2) ■ COLL 6.6A.6 R (Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).
- (3) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholder

6.6A.2

R

An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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*.

[Note: article 22 of the *UCITS Implementing Directive* and article 25(2) first paragraph of the *UCITS Directive*]

6.6A.3

G

- (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.

[Note: recital (18) of the *UCITS implementing Directive*]

Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes

6.6A.4

R

An authorised fund manager of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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* or *EEA 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

6.6A.5

R

The *authorised fund manager* of a *UCITS scheme* or the *UK UCITS management company* of an *EEA 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

6.6A.6

R

- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, or the instruments held by an *EEA UCITS scheme*, 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* or a *UK UCITS management company* of an *EEA 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

6.6A.7 **R** An authorised fund manager of a UCITS scheme, or a UK UCITS management company of an EEA UCITS scheme, must (for each scheme it manages) ensure that:

- (1) a single depositary is appointed; and
- (2) the assets of the UCITS are entrusted to the depositary for safekeeping in accordance with:
 - (a) for a UCITS scheme, ■ COLL 6.6B.18R and ■ COLL 6.6B.19R; and
 - (b) for an EEA UCITS scheme, the national laws and regulations in the Home State of the EEA UCITS scheme that implement article 22(5) of the UCITS Directive.

[Note: article 22(1) and (5) of the UCITS Directive]

Eligible depositaries for UCITS schemes

6.6A.8 **R** 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 UCITS and is one of the following:

- (1) a national central bank; or
- (2) a credit institution; or
- (3) a firm which:
 - (a) has own funds of not less than the higher of:
 - (i) the requirement calculated in accordance with articles 315 or 317 of the EU CRR; or
 - (ii) £4million; and
 - (b) either:
 - (i) is a full-scope IFPRU 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]

6.6A.9 **G** For a depositary to be established in the United Kingdom, it must have its registered office or branch in the United Kingdom.

Eligible depositaries for EEA UCITS schemes

6.6A.10 **R** A UK UCITS management company must ensure the depositary it appoints for each EEA UCITS scheme it manages is established in the Home State of the EEA UCITS scheme and is eligible to be a depositary in that Home State.

[Note: article 23(2) of the UCITS Directive]

Written contract

6.6A.11 **R**

- (1) An *authorised fund manager* of a *UCITS scheme*, or a *UK UCITS management company* of an *EEA UCITS scheme*, must ensure that the appointment of the *depository* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depository* to perform its functions for the *scheme*.

[**Note:** article 22(2) of the *UCITS Directive*]

6.6A.12 **G**

The written contract referred to in **■** COLL 6.6A.11R may cover more than one *scheme*.

6.6A.13 **G**

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*; or
(b) a *UK UCITS management company* of an *EEA UCITS scheme*; and
- (2) the *depository*.



6.6B UCITS depositaries

Application

- 6.6B.1 **R** This section applies to the *depositary* of a *UCITS scheme* managed by an *authorised fund manager*.

General obligations

- 6.6B.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

- 6.6B.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

- 6.6B.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 *UCITS*.

- 6.6B.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*.

6.6B.6 G For a *depositary* to be established in the *United Kingdom*, it must have its registered office or *branch* in the *United Kingdom*.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

6.6B.7 G 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) *IFPRU* and the *EU CRR*.

6.6B.8 R A *full-scope IFPRU investment firm* which is appointed as a *depositary* of a *UCITS scheme* must maintain *own funds* of at least £4million.

6.6B.9 G

- (1) If the *depositary* is a *full-scope IFPRU investment firm*, it is subject to the capital requirements of *IFPRU* and the *EU CRR*.
- (2) However, these requirements are not in addition to ■ COLL 6.6B.8R and therefore that *firm* may use the *own funds* required under *IFPRU* and the *EU CRR* to meet the £4million requirement.

6.6B.10 G If the *depositary* appointed in accordance with ■ COLL 6.6A.8R(3) is an *incoming EEA firm* that has a *top-up permission* for acting as trustee or *depositary* of a *UCITS*, it must comply with the applicable capital requirements set out in IPRU(INV) 5.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): organisational requirements

6.6B.11 R 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:
 - (a) sound administrative and accounting procedures and internal control mechanisms;
 - (b) effective procedures for risk assessment; and
 - (c) 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 G 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

6.6B.13 R

- (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.14 G The written contract referred to in ■ COLL 6.6B.13R may cover more than one *UCITS scheme*.

6.6B.15 G 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

6.6B.16 R The *depositary* must, for each *UCITS scheme* for which it is appointed:

- (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*]

Depository functions: cash monitoring

6.6B.17

R

The *depository* 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 *depository* 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 *third country*; 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*]

Depository functions: safekeeping of financial instruments

6.6B.18

R

- (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*]

Depository functions: safekeeping of other assets

6.6B.19

R

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 *Settlement Finality Directive*, or similar services provided by third-country securities settlement systems, 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 another *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) Paragraph (1) also applies where the *depositary* is the *UK branch* of an *EEA firm* and it performs part of its functions:
 - (a) through a *branch* in another *EEA State*; or
 - (b) from the *EEA State* where it has its registered office.
- (3) (a) A *depositary* that performs part of its functions through a *branch* or registered office in another *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*.

Delegation: safekeeping

6.6B.25

R

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*;
- (2) the *depositary* can demonstrate that there is an objective reason for the delegation;
- (3) the *depositary*:
 - (a) 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
 - (b) continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
 - (i) of any third party to whom it has delegated parts of its tasks; and
 - (ii) 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:
 - (a) 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;
 - (b) (subject to ■ COLL 6.6B.26R) for custody tasks in relation to *UCITS custodial assets*, the third party is subject to:
 - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
 - (ii) an external periodic audit to ensure that the *financial instruments* remain in its custody;
 - (c) 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*;
 - (d) 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

- (e) the third party complies with the general obligations and prohibitions relating to the *depositary* in:
 - (i) ■ COLL 6.6B.2R (General obligations);
 - (ii) ■ COLL 6.6B.3R (Conflicts of interests: depositaries);
 - (iii) ■ COLL 6.6B.13R (Written contract);
 - (iv) ■ COLL 6.6B.18R (Depositary functions: safekeeping of financial instruments);
 - (v) ■ COLL 6.6B.19R (Depositary functions: safekeeping of other assets); and
 - (vi) ■ COLL 6.6B.21R (Reuse of assets).

[Note: article 22a(2) and (3) of the *UCITS Directive*]

Delegation: third countries

6.6B.26

R

A *depositary* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in a third country even though that entity does not satisfy the conditions in ■ COLL 6.6B.25R(4)(b)(i) if:

- (1) the law of that third 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 third 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 third 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.

[Note: article 22a(3) of the *UCITS Directive*]

Delegation: sub-delegation

6.6B.27

R

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

6.6B.28 **G** 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

6.6B.29 **G** 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

6.6B.30 **R** A *depositary* must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the *UCITS Directive* internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the *UCITS Directive*]

6.6B.31 **G** **■ SYSC 18** (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further *guidance* on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between *firms* and the *FCA*.

Subordinate measures

6.6B.32 **G** Articles 3 to 17 of the *UCITS level 2 regulation* provide detailed rules supplementing this section.

6.7 Payments

Application

6.7.1 **R** This section applies in accordance with **COLL 6.7.2 R** (Table of application).

Table of application

6.7.2 **R** Table of Application. This table belongs to **COLL 6.7.1 R**.

Rule	ICVC	ACD	Depositary of an ICVC, AUT or ACS	Authorised fund manager of an AUT or ACS
6.7.1R to 6.7.5G	x	x	x	x
6.7.6G	x	x		x
6.7.7R		x		x
6.7.8G		x		x
6.7.9R		x		x
6.7.10R		x	x	x
6.7.11G		x	x	x
6.7.12R	x	x		x
6.7.13G	x	x		x
6.7.14R	x			
6.7.15R	x	x	x	x
6.7.16G		x	x	x
6.7.17R	x	x		x

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

- 6.7.3 **G**
- (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*.

6

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) it should be calculated and paid after consideration of all other payments;
 - (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.

Charges on buying and selling units

6.7.7

R

- (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

6.7.8

G

- (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

6.7.9

R

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 *depository*.

- (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

6.7.14

R

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

- 6.7.15 **R**
- (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* 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 *depository* 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

- 6.7.16 **G**
- 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

- 6.7.17 **R**
- 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

R

- (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 *depository* 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

R

- (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 *depository* 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 *depository* and the *scheme's* auditor before shortening or extending an accounting period in accordance with (4) or (6).

6.8.2A G

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 R

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 R

- (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

6.8.3A

G

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*.

Unclaimed, de minimis and joint unitholder distributions

6.8.4

R

- (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 *depository* 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*.

Guidance: contents of the prospectus

6.8.5

G

■ 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 *depository*, 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 *depository* of a *UCITS scheme* alongside ■ COLL 6.9.2G to ■ COLL 6.9.5G.

Independence of depositories and scheme operators

- 6.9.2** **G**
- (1) Regulation 15(8)(f) of the *OEIC Regulations* (Requirements for authorisation) requires independence between the *depository*, 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 *depository* 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 depository or a *manager* and a *trustee* of an *AUT* or an *authorised fund manager* and *depository* 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 *depository*; 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 *depository* of that *ICVC*; or
 - (ii) has any other relationship with the *depository* which might reasonably be expected to give rise to a potential conflict of interest.

Independence: influence by shareholding

6.9.4 G 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

6.9.5 G 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

6.9.6 G

- (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* authorised by a *Home State regulator*; or
 - (iii) a *person* subject to prudential supervision in accordance with criteria defined by *EU law* or prudential rules at least as stringent as those laid down by *EU law*;
 other than the *authorised fund manager* or the *depository*.
 - (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. The identifier 'UCITS ETF' should be used in all *EU* languages.
- (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)]

Restrictions of business for UCITS management companies

6.9.9 **R** A *UCITS management company* must not engage in any activities other than:

- (1) [deleted]
- (1A) *managing a 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

6.9.10

G

- (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 restrictions of business imposed by ■ COLL 6.9.9R reflect the position under Article 6 of the *UCITS Directive*. In accordance with recital (12) of the Directive 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.....

6.9.11

R

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 *depository*;
- (5) in respect of any *director* or *depository*, 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

R

- (1) This section applies to:
 - (a) an *authorised fund manager* of a *UCITS scheme*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

Senior personnel responsibilities

6.10.2

R

In complying with ■ SYSC 4.3.1 R (Responsibility of senior personnel), an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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* or *UK UCITS management company* 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*]

6.10.3

R

An authorised fund manager of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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:
- (a) an *authorised fund manager* of a *UCITS* scheme; and
 - (b) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS* scheme from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS* scheme under the freedom to provide *cross border services*.

Permanent risk management function

6.11.2

R

- (1) An *authorised fund manager* of a *UCITS* scheme or a *UK UCITS management company* of an *EEA 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* or *UK UCITS management company's* business and of each *scheme* it manages.
- (3) The *authorised fund manager* or *UK UCITS management company* 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) or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*.

[**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* or *UK UCITS management company* 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) or, where appropriate, the relevant *UCITS Home State* measures implementing articles 41, 42 and 43 of the *UCITS implementing Directive*;
 - (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* or, where appropriate, the relevant *UCITS Home State* measures implementing article 44 of the *UCITS implementing Directive*.
- (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

R

This section applies to:

- (1) an *authorised fund manager* and a *depository* of a *UCITS scheme*; and
- (2) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.

6.12.2

G

In the *FCA's* view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the *management company's Home State regulator* but to the extent that they constitute *fund application rules*, are also the responsibility of the *UCITS' Home State regulator*. As such, these responsibilities may overlap between the *competent authorities* of the *Home and Host States*. *EEA UCITS management companies* providing *collective portfolio management services* for a *UCITS scheme*, whether from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, are therefore advised that they will be expected to comply with the requirements of this section, except for **COLL 6.12.3 R (2)** which, as a notification requirement, is a matter reserved for the rules of the *management company's Home State*.

Risk management process

6.12.3

R

- (1) (a) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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* or a *UK UCITS management company* of an *EEA UCITS scheme* must not solely or mechanically 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, for assessing the creditworthiness of the *scheme's* assets.
- (2) An *authorised fund manager* (excluding the *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of a *UCITS scheme*

an *EEA UCITS scheme* 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 R An authorised fund manager or a UK UCITS management company of an *EEA UCITS scheme* 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.

6.12.3B G (1) In addition, an authorised fund manager or a UK UCITS management company of an *EEA UCITS scheme* 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

G

- (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 *depository* 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 depository) and ■ COLL 6.6.14 R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
- (3) An *authorised fund manager* or a *UK UCITS management company* 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* or a *UK UCITS management company* 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* or a *UK UCITS management company* of an *EEA UCITS scheme* 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*]

Risk management policy

6.12.5

R

- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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* or *UK UCITS management company* 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* or *UK UCITS management company* 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* or *UK UCITS management company* 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* or a *UK UCITS management company* 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*]

6.12.6 G *UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in ■ COLL 6.12.5 R (3)(a) are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 40 and 41 of the *UCITS implementing Directive*.

Monitoring of risk management policy.....

6.12.7 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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* or the *UK UCITS management company* 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* (excluding an *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme* 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 G *UK UCITS management companies* 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

R

- (1) An *authorised fund manager* of a *UCITS* scheme or a *UK UCITS management company* of an *EEA 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* or a *UK UCITS management company* 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* or the *UK UCITS management company* 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

G

UK UCITS management companies operating *EEA UCITS* schemes are advised that to the extent that the matters referred to in ■ COLL 6.12.9R (1)(b) are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 41 and 43 of the *UCITS implementing Directive*.

6.12.11

R

- (1) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS* scheme 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) or the equivalent *UCITS Home State* measures implementing article 84(1) of the *UCITS Directive*.

- (2) Where appropriate, the *authorised fund manager* or *UK UCITS management company* 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* or a *UK UCITS management company* of an *EEA UCITS scheme* 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)

https://www.esma.europa.eu/sites/default/files/library/2015/11/09_178.pdf

6.13 Record keeping

Application

6.13.1

R

- (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

Recording of portfolio transactions

6.13.2

R

- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA 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

R

- (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA 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]

Recordkeeping requirements

6.13.4

R

- (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the retention of the records referred to in ■ COLL 6.13.2 R and ■ COLL 6.13.3 R for a period of at least five years or, in exceptional circumstances and where directed by the FCA, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FCA to exercise its supervisory functions under the UCITS Directive.
- (2) Following the termination of its authorisation, an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the UCITS to another authorised fund manager or management company, arrange for those records for the past five years to be accessible to that other manager.
- (3) The authorised fund manager or the UK UCITS management company must retain the records referred to in ■ COLL 6.13.2 R and ■ COLL 6.13.3 R in a medium that allows the storage of information in a way accessible for future reference by the FCA, and in such a form and manner that the following conditions are met:
 - (a) the FCA must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

- (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

R

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA 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

R

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA 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 and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)

COLL 6 Annex 2RCOLL 6 Annex 2R

Guidance notes on UK UCITS management company of UCITS schemes and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)

Description	Guidance
Fund name	This is the name of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> as it appears on the FS Register or, for an <i>EEA UCITS scheme</i> , in the <i>prospectus</i> .
Fund authorisation	Whether the <i>scheme</i> is authorised and regulated in the <i>United Kingdom</i> or in another <i>EEA State</i> .
PRN or LEI	For a <i>UCITS scheme</i> , this is the product reference number of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> which appears on the FS Register. <i>EEA UCITS schemes</i> are not assigned a PRN. Instead, the legal entity identifier (LEI) of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> , should be indicated. Where the LEI is not available, please leave the cell blank.
Derivative	A <i>forward</i> , a <i>future</i> , an <i>option</i> , a <i>swap</i> , a <i>warrant</i> or another type of <i>derivative</i> instrument.
Derivatives used for investment purposes	This means that <i>derivatives</i> are not being used solely in pursuit of <i>efficient portfolio management</i> .
Global exposure	Global exposure is calculated as either the incremental exposure and leverage generated through the use of <i>derivatives</i> , or the <i>market risk</i> of the <i>scheme property</i> , as set out in COLL 5.3.7R. <i>Market risk</i> is calculated using one of the stated risk measures.
Risk measures	For each <i>scheme</i> or, where applicable, <i>sub-fund</i> , information should be provided for only one of the risk measures (commitment approach, relative <i>VaR</i> or absolute <i>VaR</i>) indicated in the table.
Average leverage	In line with the CESR Guidelines (CESR/10-788), this is the mean of all leverage calculations over the past twelve <i>months</i> , leverage being calculated as the sum of the notional of the <i>derivatives</i> used.
Leverage limit	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 <i>authorised fund manager</i> (or leave blank if appropriate and provide an explanation in the comments box).

