

Chapter 6

Operating duties and responsibilities



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

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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 **R** 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 **R** (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 **R** (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.

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Controls over the issue and cancellation of units - guidance

- (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*.

6.2.10

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Modification to number of units issued or cancelled

- (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).

6.2.11

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Compensation for box management errors

- (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: <ul style="list-style-type: none">(1) its calculations of what <i>units</i> 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 <ul style="list-style-type: none">(1) Under COLL 6.6.4 (General duties of the depository), a <i>depository</i> should take reasonable care to ensure that a <i>scheme</i> is managed in accordance with COLL 6.2 (Dealing) and COLL 6.3 (Pricing and valuation).(2) A <i>depository</i> should therefore make a regular assessment of the <i>authorised fund manager's</i> box management procedures (including supporting systems) and controls. This should include reviewing the <i>authorised fund manager's</i> controls and procedures when the <i>depository</i> 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 <ul style="list-style-type: none">(1) An <i>authorised fund manager</i> 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 <i>authorised fund manager</i> should report the fact to the <i>depository</i>, together with details of the action taken, or to be taken, to avoid repetition of the error.(2) A <i>depository</i> should report material box management errors to the <i>FCA</i> immediately. Materiality should be determined by taking into account a number of factors including:<ul style="list-style-type: none">(a) the implications of the error for the sufficiency of controls put into place by the <i>authorised fund manager</i>;(b) the significance of any breakdown in the <i>authorised fund manager's</i> 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 <i>scheme</i>, and an <i>authorised fund manager's</i> 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

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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

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- (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").
- (1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:
 - (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
 - (b) in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
 - (a) notify the *body corporate* of that event;
 - (b) not pay any income distribution to the *body corporate*; and
 - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.
- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

6.2.24

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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*.