

Chapter 6

Operating duties and responsibilities

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**.

| <i>Rule</i> | <i>ICVC</i> | <i>ACD</i> | <i>Any other director 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> |
|-------------|-------------|------------|--------------------------------------|------------------------------|-------------------------------------------------------|------------------------------------|
| 6.5.1R | 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 *depository* 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



- (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.