

## Chapter 6

# Operating duties and responsibilities

## 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.

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Authorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
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	
6.6.3CR*		x			x	
6.6.3DG*		x			x	
6.6.3ER*		x			x	
6.6.3FR*		x			x	
6.6.4R				x		x
6.6.4BR*				x		x
6.6.4CR*				x		x
6.6.4DG*				x		x

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Authorised fund manager of an AUT or ACS	Depositary of an AUT or ACS
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
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
6.6.19R		x	x		x	
6.6.20R		x	x		x	
6.6.21R		x	x		x	
6.6.22G		x	x		x	
6.6.23E		x	x		x	
6.6.24G		x	x		x	
6.6.25R		x	x		x	
6.6.26G		x	x		x	
6.6.27R		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).				
	(5)	COLL 6.6.20R to COLL 6.6.27R have a special application as set out in COLL 6.6.19R.				
	(6)	*COLL 6.6.3CR, COLL 6.6.3DG, COLL 6.6.3ER and COLL 6.6.3FR apply only to the authorised fund manager of a FIIA.				

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
	(7)	*COLL 6.6.4BR, COLL 6.6.4CR, and COLL 6.6.4DG apply only to the <i>depositary</i> of a <i>FIIA</i> .				

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

**Additional functions of an authorised fund manager of a FIIA**

- 6.6.3C **R**
- The *authorised fund manager* of a *FIIA* must establish, implement and maintain an adequate liquidity management contingency plan for exceptional circumstances which sets out:
- how the *authorised fund manager* will respond to a liquidity risk crystallising;
  - the range of liquidity tools and arrangements which it may deploy in such exceptional circumstances, any operational challenges associated with the use of such tools and the likely consequences for investors;
  - the procedures for working with the *depository* in the event the *authorised fund manager* must deploy these tools and arrangements;
  - how the *authorised fund manager* will work with its delegates, such as third-party administrators, and other relevant third parties including *intermediate unitholders*, to:
    - (a) deploy the liquidity management tools and arrangements;
    - (b) communicate their use in a timely way to *unitholders*; and
    - (c) implement any other part of this contingency plan;

any operational challenges likely to arise from working with relevant third parties identified at (4); and

communication arrangements for internal and external concerned parties (including the FCA, investors and the media where necessary).

**6.6.3D** **G** Compliance with ■ COLL 6.6.3CR may enable a *full-scope UK AIFM* that is an *authorised fund manager* of a *FIIA* to meet some of its obligations under article 47(1)(e) of the *AIFMD level 2 regulation*.

**6.6.3E** **R**

- (1) The *authorised fund manager* of a *FIIA* must obtain written confirmation from any relevant third party identified in the contingency plan under ■ COLL 6.6.3CR(4) that the third party will be able to undertake the matters specified in (2) as soon as is reasonably practicable.
- (2) The matters specified for the purpose of (1) are that the relevant third party will, where necessary, be able to:
  - (a) deploy any liquidity management tools and arrangements on which the *authorised fund manager* plans to rely as part of its contingency plan;
  - (b) in a timely way, communicate the *authorised fund manager's* use of any such tools and arrangements to *unitholders*; and
  - (c) carry out any other part of the contingency plan which the *authorised fund manager* has identified as requiring action by that third party.

**6.6.3F** **R** The *authorised fund manager* of a *FIIA* must provide the *depository* on an ongoing basis with all relevant information it needs to comply with its obligations under ■ COLL 6.6.4BR.

**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]

**Specific duties of a depository: oversight of the liquidity management of a FIIA**

6.6.4B R The *depository* of a *FIIA* must:

- (1) regularly make its own assessment of the liquidity profile of the *FIIA* and the liquidity risks presented by the *scheme property* of a *FIIA*;
- (2) take reasonable care to oversee the *authorised fund manager's* liquidity management systems and procedures on an ongoing basis, using the assessment it has made under (1), to ensure the *FIIA* is managed in accordance with the following *COLL rules* and, in the case of a *FIIA* managed by a *full-scope UK AIFM*, the following *FUND rules* and provisions in the *AIFMD level 2 regulation*:
  - (a) ■ COLL 4.2.5R(3)(pa);
  - (b) ■ COLL 6.6.3CR and ■ COLL 6.6.3ER;
  - (c) ■ FUND 3.2.2R(8);

- (d) ■ FUND 3.2.5R;
  - (e) ■ FUND 3.6.3R;
  - (f) article 44(1) and (2)(c) of the *AIFMD level 2 regulation*;
  - (g) articles 46 to 49 of the *AIFMD level 2 regulation*; and
  - (h) article 108 of the *AIFMD level 2 regulation*; and
- (3) establish an escalation procedure when instances of potential non-compliance with the *rules* and provisions set out in paragraph (2) are identified, the details of which must be made available to the FCA upon request.

**6.6.4C** **R** The *depository* of a *FIIA* managed by a *small authorised UK AIFM* must not delegate its functions under ■ COLL 6.6.4BR to one or more third parties, except in relation to supporting administrative or technical tasks that are linked to these functions.

**6.6.4D** **G** Subject to certain specified exceptions, the *depository* of a *FIIA* managed by a *full-scope UK AIFM* is generally prohibited from delegating its functions (see in particular, ■ FUND 3.11.26R (Delegation: general prohibition) and ■ FUND 3.11.28R (Delegation: safekeeping)).

**Duties of the authorised fund manager and the depository 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 *depository* 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 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.

**6.6.6A** **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) [deleted]

(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) and (where applicable) ■ COLL 6.6.4BR (Specific duties of a depository: oversight of the liquidity management of a FIIA), 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 (in the case of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*) a *person* retained by it under ■ COLL 6.6.15R(4) (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
  - (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.
- (4) Where the *authorised fund* is a *UCITS scheme*, this *rule* applies to the *scheme's depository* to the extent the provisions are consistent with the requirements of the *UCITS level 2 regulation*.
- (5) Where the *authorised fund* is a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, this *rule* applies to the *scheme's depository* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[**Note:** Articles 12 to 14 of the *UCITS level 2 regulation* and articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depository* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*.]

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

6.6.13

**R**

- (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* of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme*; and
  - (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*.
  - (b) [deleted]
- (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 a *UK 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 depositaries* 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.
- (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 providing for the exchange of information with the relevant *overseas regulator* which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that *UCITS schemes, management companies and depositaries* cannot be individually identified, without prejudice to cases covered by criminal law.
- (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

6.6.17

R

- (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.

**Application of assessment of value and independent director rules**

6.6.19

R

■ COLL 6.6.20R to ■ COLL 6.6.26G apply to:

- (1) an *authorised fund manager* (other than one which is managing an *authorised fund* under a *temporary permission*) of an *AUT*, *ACS* or *ICVC*.
- (2) [deleted]

**Assessment of value**

6.6.20

R

- (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.
- (2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class of units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

**Table: minimum considerations – assessment of value**

6.6.21

R

This table belongs to ■ COLL 6.6.20R (Assessment of value).

**Quality of service**

- (1) The range and quality of services provided to *unitholders*.

**Performance**

(2) The performance of the *scheme*, after deduction of all payments out of *scheme property* as set out in the *prospectus* (in this *rule*, COLL 6.6.23E and COLL 8.5.19E, “charges”). Performance should be considered over an appropriate timescale having regard to the *scheme’s* investment objectives, policy and strategy.

**AFM costs - general**

(3) In relation to each charge, the cost of providing the service to which the charge relates, and when money is paid directly to *associates* or external parties, the cost is the amount paid to that *person*.

**Economies of scale**

(4) Whether the *AFM* is able to achieve savings and benefits from economies of scale, relating to the direct and indirect costs of managing the *scheme property* and taking into account the value of the *scheme property* and whether it has grown or contracted in size as a result of the *sale and redemption of units*.

**Comparable market rates**

(5) In relation to each service, the market rate for any comparable service provided:

- (a) by the *AFM*; or
- (b) to the *AFM* or on its behalf, including by a *person* to which any aspect of the *scheme’s* management has been delegated.

**Comparable services**

(6) In relation to each separate charge, the *AFM’s* charges and those of its *associates* for comparable services provided to *clients*, including for institutional mandates of a comparable size and having similar investment objectives and policies;

**Classes of units**

(7) Whether it is appropriate for *unitholders* to hold *units* in *classes* subject to higher charges than those applying to other *classes* of the same *scheme* with substantially similar rights.

6.6.22 G When assessing the quality of service provided under ■ COLL 6.6.21R(1):

- (1) the *AFM* should have regard to the quality of service it provides and the quality of service provided by any *person* to which any aspect of the *scheme’s* management has been delegated or which provides services to the *AFM* or on its behalf; and
- (2) the *AFM’s* assessment of quality of service is not confined to services provided directly to *unitholders* but may include services undertaken on their behalf by the *AFM*, such as consideration of the quality of the investment process used to make decisions about managing the *scheme property*.

6.6.23 E Failure by an *AFM* to take sufficient steps to address any instance where a *scheme’s* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COLL 6.6A.2R, ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

6.6.24 G (1) ■ COLL 6.6A.2R applies to *AFMs* of *UCITS schemes* and in broad terms requires *AFMs* to act in the best interests of *unitholders*. In particular,

■ COLL 6.6A.2R(1) requires *AFMs* to ensure *unitholders* are treated fairly, ■ COLL 6.6A.2R(5) requires *AFMs* to act in such a way as to prevent undue costs being charged to any *scheme* it manages and its *unitholders* and ■ COLL 6.6A.2R(6)(b) requires an *AFM* to act solely in the interests of the *scheme* and its *unitholders*.

- (2) ■ COBS 2.1.1R is the *clients best interests rule*, ■ COBS 2.1.4R(2) requires a *full-scope UK AIFM* to act in the best interests of the *AIF* it manages or the investors of the *AIF* it manages and the integrity of the market and ■ COBS 2.1.4R(3) requires the *AFM* to treat all investors fairly.

### Independent directors

6.6.25

**R**

- (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural *persons*.
- (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
- (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
- (4)
  - (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
  - (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.
  - (c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.
- (5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten year period referred to in (4).
- (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.

6.6.26

**G**

- (1) The role of the independent members should include providing input and challenge as part of the *AFM's* assessment of value in accordance with ■ COLL 6.6.20R. Independent members may be tasked with

additional responsibilities, taking into consideration remuneration and conflict of interest rules.

- (2) A member of an *AFM's governing body* is unlikely to be considered independent if any of the following circumstances exist:
  - (a) the *person* is an *employee* of the *AFM* or of an *affiliated company* or paid by them for any role (other than as an independent member of the *governing body* of an *affiliated company* or of a body exercising an independent governance function within the *AFM's group*) including participating in the *AFM's share option* or performance-related pay scheme; or
  - (b) the *person* has been an *employee* of the *AFM* or of an *affiliated company* within the *AFM's group* (other than having been an independent member of the *governing body* of an *affiliated company* or of a body exercising an independent governance function within the *AFM's group*) or of any *person* to which *collective portfolio management* of the *scheme* has been delegated, within the five years preceding their appointment to the *governing body*; or
  - (c) the *person* has, or had within the three years preceding their appointment, a material business relationship of any description with the *AFM* or with an *affiliated company* or with any *person* to which *collective portfolio management* of the *scheme* has been delegated, either directly or indirectly; or
  - (d) the *person* has received any sort of remuneration from the *AFM's group* (other than as an independent member of the *governing body* of an *affiliated company* of the *AFM* or of a body exercising an independent governance function within the *AFM's group*) within the five years preceding their appointment; or
  - (e) the *person* has a *close relative* who is an *officer* or other senior *employee* of the *AFM* or a company within the *AFM's group*.
- (3) The expertise and experience required under ■ COLL 6.6.25R(3) may have been gained through professional experience, public service, academia or otherwise, and does not need to relate to the financial services industry.
- (4) The effect of ■ COLL 6.6.25R(6) is that a *person* who serves on the *governing body* should be subject to appropriate contractual terms so that, when acting in the capacity of an independent member of the *governing body*, they are free to act in the interests of *unitholders* and should be able to do so without breaching their terms of employment.
- (5) An *AFM* should fill any vacancies that arise within the required number of independent members on its *governing body* as soon as possible and, in any event, within six *months*.
- (6) An *AFM* should consider indemnifying the independent members of its *governing body* against liabilities incurred while fulfilling their duties as such members.

**Allocation of responsibility for compliance to an approved person**

6.6.27

**R**

- (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 6.6.20R, ■ COLL 6.6.25R, and, as applicable, ■ COLL 6.6A.2R or ■ COBS 2.1.4R to an *approved person*.
  
- (2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.