Chapter 7

Suspension of dealings and termination of authorised funds
## 7.1 Introduction

### Application

(1) This chapter applies to an ICVC, an ACD, any other director of an ICVC, a depositary of an ICVC, an authorised fund manager of an AUT or ACS and a depositary of an AUT or ACS, where such AUT, ACS or ICVC is a UCITS scheme or a non-UCITS retail scheme in accordance with COLL 7.1.2 R (Table of application).

(2) COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.

### Table of application

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<th>ICVC</th>
<th>ACD</th>
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<th>Authorised fund manager of an AUT or ACS</th>
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<td>7.1.3</td>
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### Purpose

1. This chapter helps to achieve the statutory objective of protecting investors by ensuring they do not buy or redeem units at a price that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to value, or to dispose of and obtain payment for, all or some of the scheme property of an authorised fund or sub-fund. COLL 7.2.1 R (Requirement) sets out the circumstances in which an authorised fund manager must or may suspend dealings in units and the manner in which a suspension takes effect.

2. This chapter also helps with the statutory objective of protecting consumers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of ICVCs, AUTs and co-ownership schemes. EG 14 (Collective investment schemes) deals with
the FCA's powers to revoke the authorisation of authorised funds otherwise than by consent.
7.2 Suspension and restart of dealings

Requirement

7.2.1

(1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, temporarily suspend the issue, cancellation, sale and redemption of units in an authorised fund (referred to in this chapter as “dealings in units”), where due to exceptional circumstances it is in the interest of all the unitholders in the authorised fund. Where an authorised fund is a regulated money market fund, the authorised fund manager must ensure that any such suspensions are consistent with the Money Market Funds Regulation.

(1A) The authorised fund manager and the depositary must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the unitholders.

(2) On suspension, the authorised fund manager, or the depositary if it has required the authorised fund manager to suspend dealings in units, must:

(a) immediately inform the FCA, stating the reason for its action; and

(b) as soon as practicable give written confirmation of the suspension and the reasons for it to:

(i) the FCA; and

(ii) the Home State regulator in each EEA State in which the authorised fund manager holds itself out as willing to sell or redeem units of the authorised fund concerned.

(2A) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.

(2B) In making the notification set out in (2A), the authorised fund manager must ensure that it:

(a) draws unitholders’ particular attention to the exceptional circumstance which resulted in the suspension;

(b) is clear, fair and not misleading; and

(c) informs unitholders how to obtain the information detailed in (2C).

(2C) The authorised fund manager must ensure that it publishes (on its website or by other general means) sufficient details to keep
unitholders appropriately informed about the suspension including, if known, its likely duration.

(3) During a suspension:
   (a) none of the obligations in §COLL 6.2 (Dealing) apply; and
   (b) the authorised fund manager must comply with as much of §COLL 6.3 (Valuation and pricing) as is practicable in the light of the suspension.

(4) The suspension of dealings in units must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased.

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (2).

(5) The authorised fund manager must inform the FCA of the proposed restart of dealings in units and immediately after the restart must confirm this by giving notice to the FCA and the authorities mentioned in (2)(b)(ii).

(6) The authorised fund manager may agree, during the suspension, to deal in units in which case all deals accepted during, and outstanding prior to, the suspension will be undertaken at a price calculated at the first valuation point after restart of dealing in units, subject to (8).

(7) This rule applies to a sub-fund as it applies to an authorised fund, and:
   (a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and
   (b) this rule can only apply to one or more classes of units without being applied to other classes, if it is in the interest of all the unitholders.

(8) If an authorised fund operates limited redemption arrangements, and the event in (1) has affected a valuation point, the authorised fund manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

[Note: article 45(2) of the UCITS Directive]

Temporary suspension of units of a master UCITS or qualifying master scheme

Where:

(1) an authorised fund manager of a UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FCA; or

(2) an operator of an EEA UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of its Home State regulator; or
(3) an authorised fund manager of a non-UCITS retail scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of the FCA; or

(4) the operator of a recognised scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units whether at its own initiative or at the request of its regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) or feeder NURS is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS or qualifying master scheme.

[Note: article 60(3) of the UCITS Directive]

Guidance

7.2.2  

1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the unitholders. Difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the authorised fund manager and depositary would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the unitholders. Before an authorised fund manager and depositary determines that it is the best interests of unitholders to suspend dealing, it should ensure that any alternative courses of action have been discounted.

2) The authorised fund manager will need to ensure that any suspension, while maintaining unitholders’ interests, is temporary, of minimal duration and is consistent with the provisions of the prospectus and the instrument constituting the fund.

3) During a suspension, the authorised fund manager should inform any person who requests a sale or redemption of units that all dealings in units have been suspended and that that person has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.
7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1 (1) The winding up of an ICVC may be carried out under this section instead of by the court provided the ICVC is solvent and the steps required under regulation 21 the OEIC Regulations (The Authority’s approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the ACD and any other directors of the ICVC.

(2) The termination of a sub-fund may be carried out under this section, instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC’s instrument of incorporation and prospectus have been notified to the FCA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) A sub-fund or ICVC may also be terminated or wound up in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(4) COLL 7.3.3 G gives an overview of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval.

Special meanings for termination of a sub-fund of an ICVC

7.3.2 In this section, where a sub-fund of an ICVC is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);
(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and

(4) liabilities, are references to liabilities of the ICVC allocated or attributable to the sub-fund to be terminated.

**Guidance on winding up or termination**

This table belongs to COLL 7.3.1 G (4) (Explanation of COLL 7.3)

Summary of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval.

Notes: N = Notice to be given to the FCA under regulation 21 of OEIC Regulations

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.3.8 R(4))

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<thead>
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<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
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<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days</td>
<td>7.3.5 (2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary</td>
<td>By N + 21 days</td>
<td>7.3.5 (4) and (5)</td>
</tr>
<tr>
<td>3</td>
<td>Receive the FCA approval</td>
<td>N + one month</td>
<td>Regulation 21 of OEIC Regulations</td>
</tr>
<tr>
<td>4</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.3.6</td>
</tr>
<tr>
<td>5</td>
<td>Realise proceeds, wind up, instruct depositary accordingly</td>
<td>ASAP after E</td>
<td>7.3.7</td>
</tr>
<tr>
<td>6</td>
<td>Prepare final account or termination account &amp; have account audited</td>
<td>On completion of W/U or termination</td>
<td>7.3.8</td>
</tr>
<tr>
<td>7</td>
<td>Send final account or termination account and auditor’s report to the FCA &amp; unitholders</td>
<td>Within 4 months of FAP</td>
<td>7.3.8(6)</td>
</tr>
<tr>
<td>8</td>
<td>Request FCA to revoke relevant authorisation order or update its records</td>
<td>On completion of W/U or termination</td>
<td>7.3.7(9)</td>
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</table>
When an ICVC is to be wound up or a sub-fund terminated or wound up

1. An ICVC must not be wound up except:
   (a) under this section; or
   (b) as an unregistered company under Part V of the Insolvency Act 1986.

2A. An ICVC must not:
   (a) be wound up except under this section; or
   (b) wound up under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the OEIC Regulations) as an unregistered company.

2. An ICVC must not be wound up or a sub-fund terminated under this section if there is a vacancy in the position of ACD.

3. An ICVC must not be wound up or a sub-fund terminated under this section:
   (a) unless and until effect may be given, under regulation 21 of the OEIC Regulations, to proposals to wind up the affairs of the ICVC or to proposals to make the alterations to the ICVC’s instrument of incorporation and prospectus that will be required if a sub-fund is terminated; and
   (b) unless a statement has been prepared and sent or delivered to the FCA under COLL 7.3.5 R (Solvency statement) and received by the FCA prior to satisfaction of the condition in (a).

4. Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an ICVC or terminate a sub-fund under this section must be taken:
   (a) if an extraordinary resolution to that effect is passed; or
   (b) when the period (if any) fixed for the duration of the ICVC or the sub-fund by the instrument of incorporation expires or any event occurs, for which the instrument of incorporation provides that the ICVC or the sub-fund is to be wound up or terminated; or
   (c) on the date stated in any agreement by the FCA in response to a request from the directors for the winding up of the ICVC or a request for the termination of the sub-fund; or
   (d) on the effective date of a duly approved scheme of arrangement which is to result in the ICVC ceasing to hold any scheme property; or
   (e) in the case of a sub-fund, on the effective date of a duly approved scheme of arrangement which is to result in the sub-fund ceasing to hold any scheme property; or
   (f) in the case of an ICVC that is an umbrella, on the date on which all of its sub-funds fall within (e) or have otherwise ceased to hold any scheme property, notwithstanding that the ICVC may have assets and liabilities that are not attributable to any particular sub-fund.
Solvency statement

7.3.5 R

(1) Before notice is given to the FCA under regulation 21 of the OEIC Regulations of the proposals referred to in COLL 7.3.4 R (3), the directors must make a full enquiry into the ICVC’s or, in the case of termination of a sub-fund, the sub-fund’s affairs, business and property to determine whether the ICVC or the sub-fund will be able to meet all its liabilities.

(2) The ACD must then, based on the results of this enquiry, prepare a statement either:

(a) confirming that the ICVC or the sub-fund will be able to meet all its liabilities within twelve months of the date of the statement; or

(b) stating that such confirmation cannot be given.

(3) This solvency statement must:

(a) relate to the ICVC’s or the sub-fund’s affairs, business and property at a date no more than 28 days before the date on which notice is given to the FCA;

(b) if there is more than one director, be approved by the board of directors and signed on their behalf by the ACD; and

(c) if it contains the confirmation under (2)(a), be signed by at least one other director or, if there is no director other than the ACD, be signed by the ACD.

(4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the OEIC Regulations (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with regulation 21 of the OEIC Regulations.

Consequences of commencement of winding up or termination

7.3.6 R

(1) Winding up or commencement of termination must commence once the conditions referred to in COLL 7.3.4 R (3) are both satisfied or, if later, once the events in COLL 7.3.4 R (4) have occurred.

(2) Once winding up or termination has commenced:

(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the ICVC or to the units and scheme property in the case of a sub-fund;

(b) the ICVC must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.3.7 R (5);

(c) the ACD must cease to sell or redeem units or to arrange for the issue or cancellation of units, except in respect of the final cancellation under COLL 7.3.7 R (5);
(d) no transfer of a *unit* may be registered and no other change to the *register of unitholders* may be made without the sanction of the *directors*;

(e) where winding up an *ICVC*, the *ICVC* must cease to carry on its business, except for its beneficial winding up; and

(f) the corporate status and corporate powers of the *ICVC* and (subject to the preceding provisions of this *rule*) the powers of the *directors* continue until the *ICVC* is dissolved.

(3) If the *ACD* has not previously notified *unitholders* of the proposal to wind up the *ICVC* or terminate the *sub-fund*, the *ACD* must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the *unitholders*.

**Manner of winding up or termination**

(1) [deleted]

(2) The *ACD* must, as soon as practicable after winding up or termination has commenced, cause the *scheme property* to be realised and the liabilities of the *ICVC* or the *sub-fund* to be met out of the proceeds.

(3) The *ACD* must instruct the *depositary* how such proceeds (until utilised to meet liabilities or make distributions to *unitholders*) must be held and those instructions must be prepared with a view to the prudent protection of creditors and *unitholders* against loss.

(4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the *ICVC*’s or the *sub-fund*’s remaining liabilities, the *ACD* may arrange for the *depositary* to make one or more interim distributions to the *unitholders* proportionately to the right of their respective *units* to participate in *scheme property* at the commencement of the winding up or termination.

(5) On or before the date on which the final account is sent to *unitholders* in accordance with COLL.7.3.8 R (Final account and termination account), the *ACD* must arrange for all *units* in issue to be *cancelled* and for the *depositary* to make a final distribution to the *unitholders*, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the *ICVC* or *sub-fund*).

(6) Paragraphs (2) to (5) are subject to the terms of any *scheme of arrangement* sanctioned by an *extraordinary resolution* passed on or before the commencement of the winding up or termination.

(7) Where the *ICVC* and one or more *unitholders* (other than the *ACD*) agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the *scheme property* which is proportionate to the right to participate in *scheme property* of that or those *unitholders*. 
(8) In the case of (7), the ACD must cause the ICVC to distribute that part of the scheme property in specie to that or those unitholders in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the ACD appropriate to ensure that those unitholders bear the proportion of the liabilities and the expenses of the distribution attributable to their units.

(9) The depositary must notify the FCA once the winding up of the ICVC or the termination of a sub-fund (including compliance with ■ COLL 7.3.8 R) is complete and at the same time the ACD or the depositary must request the FCA to revoke the relevant authorisation order (on the winding up of an ICVC) or to update its records (on the termination of a sub-fund of an ICVC).

(10) Where any sum of money stands to the account of the ICVC at the date of its dissolution or a sub-fund at the date of its termination, the ACD must arrange for the depositary to pay or lodge that sum within one month after that date in accordance with regulation 33(4) or (5) of the OEIC Regulations (Dissolution in other circumstances).

(11) [deleted]

(12) [deleted]

(13) [deleted]

(14) [deleted]

(15) [deleted]

For the purposes of this section an ICVC may be treated as having been wound up or a sub-fund terminated upon completion, where relevant, of all of the steps in (1) to (3):

(1) payment or adequate provision being made (by the ACD) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;

(2) the scheme property being realised or distributed in accordance with ■ COLL 7.3.7 R (8); and

(3) the net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Final account and termination account

(1) Once the ICVC's affairs are wound up or termination of the sub-fund has been completed (including distribution or provision for distribution in accordance with ■ COLL 7.3.7 R (5)), the ACD must prepare an account of the winding up or termination showing:

(a) how it has been conducted; and

(b) how the scheme property has been disposed of.
(2) The account in (1) must be, if there is:

(a) more than one director, approved by the board of directors and be signed on their behalf by the ACD and at least one other director; or

(b) no director other than the ACD, signed by the ACD.

(3) Once signed, this account is the "final account" for the purposes of the winding up of an ICVC and the "termination account" for the purposes of the termination of a sub-fund.

(4) The final account must state the date on which the ICVC's affairs were wound up and the date stated must be regarded as the final day of the accounting period of the ICVC then running (‘final accounting period’) for the purpose of COLL 4.5.

(4A) The termination account must state the date on which the sub-fund's affairs were terminated.

(5) The ACD must ensure that the ICVC's auditor makes a report in respect of the final account or termination account, which states the auditor's opinion whether the final account or termination account has been properly prepared for the purpose of (1).

(6) Within four months of the date of the completion of the winding up of the ICVC or termination of the sub-fund, the ACD must send a copy of the final account or termination account and the auditor's report on it to the FCA and to each person who was a unitholder (or the first named of joint unitholders) immediately before the winding up or termination commenced.

**Duty to ascertain liabilities**

7.3.9 R

(1) The ACD must use all reasonable endeavours to ensure that all the liabilities of the ICVC or the sub-fund are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the ACD:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the ACD rejects any claim against the ICVC or the sub-fund in whole or part or against the ICVC or the sub-fund in respect of a liability in whole or part, the ACD must immediately send to the claimant written notice of its reasons for doing so.

**Reports and accounts**

7.3.10 R

(1) [deleted]

(1A) [deleted]
(2) For any annual accounting period or half-yearly accounting period which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any unitholder upon request.

(3) The ACD must ensure that it keeps unitholders appropriately informed about the winding up or termination including, if known, its likely duration.

(4) The ACD must send a copy of the information required by (3) to each person who was a unitholder or the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.3.7 R (5).

7.3.10A  

(1) The effect of COLL 7.3.10R is that the ACD must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with COLL 4.5.14 R.

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates at six-monthly or more frequent intervals.

Liabilities of the ACD

7.3.11  

(1) Except to the extent that the ACD can show that it has complied with COLL 7.3.9 R (Duty to ascertain liabilities), the ACD is personally liable to meet any liability of an ICVC or a sub-fund, of which it is the ACD, wound up or terminated under this section (whether or not the ICVC has been dissolved or, in the case of the sub-fund, termination has been completed) that was not discharged before the completion of the winding up or termination.

(2) Where winding up an ICVC, if the proceeds of the realisation of the assets attributable, or allocated to a particular sub-fund of an umbrella ICVC are insufficient to meet the liabilities attributable or allocated to that sub-fund, the ACD must pay to the ICVC, for the account of that sub-fund the amount of the deficit, unless and to the extent that the ACD can show that the deficit did not arise as a result of any failure by the ACD to comply with the rules in COLL.

(3) The liabilities of the ACD under this rule create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ICVC in the circumstances described in (2)).

(4) The obligations of the ACD under this rule do not affect any other obligation of the ACD under these rules or the general law.

7.3.12  [deleted]
COLL 7 : Suspension of dealings and termination of authorised funds

Section 7.3 : Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

7.3.13 R

Miscellaneous

(1) If:

(a) during the course, or as a result, of the enquiry referred to in COLL 7.3.5 R (1) (Solvency statement), the directors become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

(b) after winding up or termination has commenced, the ACD becomes of the opinion that the ICVC or the sub-fund will be unable to meet all its liabilities within twelve months of the date of the statement provided under (a) of COLL 7.3.5 R (2);

the directors must immediately present a petition or cause the ICVC or sub-fund to present a petition for the winding up of the ICVC or sub-fund as an unregistered company under Part V of the Insolvency Act 1986.

(2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or termination has been sent to the FCA, there is a vacancy in the position of ACD:

(a) the directors of the ICVC must immediately present or cause the ICVC or sub-fund to present; or

(b) if there are no directors, the depositary must immediately present;

a petition for the winding up of the ICVC or sub-fund as an unregistered company under Part V of the Insolvency Act 1986.
7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of COLL 7.4

7.4.1 (1) This section deals with the circumstances and manner in which an AUT is to be wound up or a sub-fund of an AUT is to be terminated. Under section 256 of the Act (Requests for revocation of authorisation order), the manager or trustee of an AUT may request the FCA to revoke the authorisation order in respect of that AUT. Section 257 of the Act (Directions) gives the FCA the power to make certain directions.

(2) The termination of a sub-fund under this section will be subject to section 251 of the Act (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the trust deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) An AUT or a sub-fund of an AUT may also be wound up or terminated in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(4) COLL 7.4.2A G gives an overview of the main steps in winding up an AUT or terminating a sub-fund under FCA rules, assuming FCA approval.

Special meanings for termination of a sub-fund of an AUT

7.4.2 In this section, where a sub-fund of an AUT is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
(4) liabilities, are references to liabilities of the AUT allocated or attributable to the sub-fund to be terminated.

**Guidance on winding up or termination**

This table belongs to COLL 7.4.1 G (4) (Explanation of COLL 7.4)

Summary of the main steps in winding up an AUT or terminating a sub-fund under FCA rules

**Notes:**
- N = Notice to be given to the FCA under section 251 of the Act.
- E = commencement of winding up or termination
- W/U = winding up
- FAP = final accounting period (COLL 7.4.5 R (4))

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Receive FCA approval</td>
<td>N + one month</td>
<td>Section 251 of the Act</td>
</tr>
<tr>
<td></td>
<td>On receipt of notice from the FCA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.4.3R</td>
</tr>
<tr>
<td>3</td>
<td>Trustee to realise and distribute proceeds</td>
<td>ASAP after E</td>
<td>7.4.4R(1) to (5)</td>
</tr>
<tr>
<td>4</td>
<td>Send annual long report of manager and trustee to the FCA</td>
<td>Within 4 months of FAP</td>
<td>7.4.5R(5)</td>
</tr>
<tr>
<td>5</td>
<td>Request FCA to revoke relevant authorisation order</td>
<td>On completion of W/U</td>
<td>7.4.4R(6)</td>
</tr>
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</table>

**When an AUT is to be wound up or a sub-fund terminated**

(1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:

(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the AUT or to the units and scheme property in the case of a sub-fund;

(b) the trustee must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.4.4 R (1) or (2);

(c) the manager must cease to sell and redeem units;

(d) the manager must cease to arrange the issue or cancellation of units under COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4.4 R (1) or (2);

(dA) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4 R (1); and
(e) the trustee must proceed to wind up the AUT or terminate the sub-fund in accordance with COLL 7.4.4 R.

(1A) If the manager has not previously notified unitholders of the proposal to wind up the AUT or terminate the sub-fund, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the unitholders.

(2) The events referred to in (1) are:

(a) the authorisation order of the AUT is revoked;

(b) alterations to the AUT’s trust deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 251 of the Act;

(c) the passing of an extraordinary resolution winding up the AUT or terminating the sub-fund, provided FCA’s prior consent to the resolution has been obtained by the manager or trustee;

(d) in response to a request to the FCA by the manager or the trustee for the revocation of the authorisation order, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the AUT, the FCA will agree to that request;

(e) the expiration of any period specified in the trust deed as the period at the end of which the AUT is to be wound up or the sub-fund is to terminate;

(f) the effective date of a duly approved scheme of arrangement, which is to result in the AUT or sub-fund that is subject to the scheme of arrangement being left with no property; or

(g) the date on which a relevant pension scheme is notified in writing by The Pensions Regulator that the scheme is no longer registered under the Welfare and Pensions Reform Act 1999 as a stakeholder pension scheme.

(3) This rule is without prejudice to COLL 7.2.1 R (Requirement) and to any order or direction made under section 257 or 258 of the Act.

Manner of winding up or termination

(1) Where COLL 7.4.3 R (2) (f) applies, the trustee must cancel all units in issue and wind up the AUT or terminate the sub-fund in accordance with the approved scheme of arrangement.

(2) In any other case falling within COLL 7.4.3 R:

(a) once the AUT falls to be wound up or sub-fund terminated, the trustee must realise the scheme property;

(b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the trustee must cancel all units in issue and distribute the proceeds of that realisation to the unitholders and the manager proportionately to their respective interests in the AUT or sub-fund as at the date, or the date of the relevant event referred to in COLL 7.4.3 R; and
(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the trustee after one year from the date on which they became payable must be paid by the trustee into court (or, in Scotland, as the court may direct), subject to the trustee having a right to retain any expenses properly incurred by him relating to that payment.

(3) For an AUT which is a relevant pension scheme, payments must not be made to unitholders in the AUT, the realisation proceeds having to be paid by the trustee in accordance with the trust deed.

(4) Where the trustee and one or more unitholders agree, the requirement in (2) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those unitholders.

(5) The trustee must distribute the part of the scheme property referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the trustee for ensuring that, that or those unitholders bear a proportional share of the liabilities and costs.

(6) On completion of the winding up in respect of the events referred to in COLL 7.4.3 R (2)(c), COLL 7.4.3 R (2)(d), COLL 7.4.3 R (2)(e) or COLL 7.4.3 R (2) (f), the trustee must notify the FCA in writing and at the same time the manager or trustee must request the FCA to revoke the relevant authorisation order.

For the purposes of this section, an AUT may be treated as having been wound up or a sub-fund terminated upon completion, where relevant, of all of the steps in (1) to (3):

(1) payment or adequate provision being made (by the trustee after consulting the manager) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;

(2) the scheme property being realised or distributed in accordance with COLL 7.4.4 R (5); and

(3) the net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Accounting and reports during winding up or termination

(1) [deleted]

(1A) [deleted]

(2) For any annual accounting period or half-yearly accounting period which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any unitholder upon request.
(2A) The manager must ensure that it keeps unitholders appropriately informed about the winding up or termination, including its likely duration.

(2B) The manager must send a copy of the information required by §COLL 7.4.5 R (2A) to each person who was a unitholder or the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with §COLL 7.4.4 R (2)(b).

(3) [deleted]

(4) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

(5) Within four months after the end of the final annual accounting period or the termination of the sub-fund, the annual reports of the manager and trustee must be published and sent to the FCA.

(6) The manager must, on publication of the annual long report in (5), write to each person who was a unitholder or the first named of joint unitholders immediately before the commencement of winding up or termination to inform them that the annual long report is available free-of-charge on request.

(1) The effect of §COLL 7.4.5R is that the manager must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with §COLL 4.5.14 R.

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates to unitholders at six-monthly or more frequent intervals.
7.4A Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

Explanation of COLL 7.4A

7.4A.1

(1) This section deals with the circumstances and manner in which an ACS is to be wound up or a sub-fund of a co-ownership scheme is to be terminated otherwise than by the court as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (further rules regarding schemes of arrangement are found in COLL 7.6 (Schemes of arrangement)).

(2) An ACS may be wound up under this section only if it is solvent. Under section 261W of the Act (Requests for revocation of authorisation order), the authorised contractual scheme manager or depositary of an ACS may request the FCA to revoke the authorisation order in respect of that ACS. The FCA may then indicate that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to that request. Section 261X of the Act (Directions) gives the FCA the power to make certain directions.

(3) A sub-fund of a co-ownership scheme may be terminated under this section only if it is solvent. The termination of a sub-fund under this section will be subject to section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary). Termination can only commence once the proposed alterations to the contractual scheme deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of a sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(4) An ACS or a sub-fund of a co-ownership scheme may also be wound up or terminated in connection with a scheme of arrangement. The requirements of section 261Q also apply in relation to a proposal that an ACS or a sub-fund of a co-ownership scheme be involved in a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(5) COLL 7.4A.3 G gives an overview of the main steps in winding up a solvent ACS or terminating a sub-fund of a co-ownership scheme under FCA rules, assuming FCA approval.
### Special meanings in this section

**7.4A.2**

(1) In this section, where a *sub-fund* of a *co-ownership scheme* is being terminated, references to:

- (a) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (b) a *resolution*, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (c) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
- (d) *liabilities*, are references to liabilities of the *co-ownership scheme* allocated or attributable to the *sub-fund* to be terminated.

(2) In this section:

- (a) a "section 261Q case" refers to:
  - (i) a case where a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than in connection with a *scheme of arrangement*; or
  - (ii) a case where an *ACS* or a *sub-fund* of a *co-ownership scheme* is to be wound up or terminated in connection with a *scheme of arrangement*;
- (b) a "section 261W case" refers to a case where an *ACS* is to be wound up otherwise than in connection with a *scheme of arrangement*.

### Guidance on winding up or termination

**7.4A.3**

This table belongs to COLL 7.4A.1G (Explanation of COLL 7.4A)

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule, (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days or R-28 days</td>
<td>7.4A.5R(2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary.</td>
<td>By N + 21 days or by R + 21 days</td>
<td>7.4A.5R(4) and (5)</td>
</tr>
</tbody>
</table>
### COLL 7 : Suspension of dealings and termination of authorised funds

#### Section 7.4A : Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

|   | In a section 261Q case: | N + one month or R + one month | Section 261Q of the Act (in a section 261Q case)  
7.4A.4R(3)(c) to (e) (in a section 261W case) |
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>3</td>
<td>- the authorised contractual scheme manager receiving FCA approval; - or one month having passed after submitting the requisite notice under section 261Q of the Act without the authorised contractual scheme manager or depositary having received from the FCA a warning notice under section 261R in respect of the proposal. In a section 261W case, the authorised contractual scheme manager or depositary receives an indication from the FCA that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.4A.4R</td>
</tr>
<tr>
<td>5</td>
<td>Depositary to realise and distribute proceeds</td>
<td>ASAP after E</td>
<td>7.4A.6R(1)-(5)</td>
</tr>
<tr>
<td>6</td>
<td>Send annual long report of authorised contractual scheme manager, depositary and auditor to the FCA</td>
<td>Within 4 months of FAP</td>
<td>7.4A.9R(7)</td>
</tr>
</tbody>
</table>
When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

(1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:

(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the units and scheme property in the case of a sub-fund of a co-ownership scheme;

(b) the depositary must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.4A.6R (1) or COLL 7.4A.6R (2) (Manner of winding up or termination);

(c) the authorised contractual scheme manager must cease to sell and redeem units;

(d) the authorised contractual scheme manager must cease to arrange the issue or cancellation of units under COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4A.6R (1) or (2);

(e) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4 R (1) (Register: general requirements and contents); and

(f) the depositary must proceed to wind up the ACS or terminate the sub-fund in accordance with COLL 7.4A.6 R.

(2) If the authorised contractual scheme manager has not previously notified unitholders of the proposal to wind up the ACS or terminate the sub-fund of the co-ownership scheme, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the unitholders.

(3) The matters referred to in (1) are:

(a) the authorisation order of the ACS is revoked;

(b) alterations to the co-ownership scheme’s contractual scheme deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act;

(c) the passing of an extraordinary resolution winding up the ACS or terminating the sub-fund, provided the FCA’s prior consent to the resolution has been obtained by the authorised contractual scheme manager or depositary;
(d) in response to a request to the FCA by the authorised contractual scheme manager or the depositary for the revocation of the authorisation order, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the ACS, the FCA will agree to that request;

(e) the expiration of any period specified in the contractual scheme deed as the period at the end of which the ACS is to be wound up or the sub-fund is to terminate;

(f) the effective date of a duly approved scheme of arrangement, which is to result in the ACS or sub-fund that is subject to the scheme of arrangement being left with no property;

(g) in the case of a co-ownership scheme that is an umbrella, the date on which all or the last of its sub-funds fall within (f) or have otherwise ceased to hold any scheme property, notwithstanding that the co-ownership scheme may have assets and liabilities that are not attributable exclusively to any particular sub-fund.

(4) An ACS must not be wound up nor a sub-fund terminated under this section unless the requirements of both (a) and (b) are satisfied:

(a) An ACS must not be wound up nor a sub-fund terminated under this section unless and until:

(i) in a section 261Q case either:

(A) the FCA has given written approval to the proposal; or

(B) one month has passed since the authorised contractual scheme manager gave notice under section 261Q without the authorised contractual scheme manager or depositary having received from the FCA a warning notice under section 261R in respect of the proposal; or

(ii) in a section 261W case, the FCA indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.

(b) In addition an ACS must not be wound up nor a sub-fund terminated under this section unless a statement has been prepared and sent or delivered to the FCA under COLL 7.4A.5 R (Solvency statement) and received by the FCA prior to the satisfaction of the condition in (a).

(5) This rule is without prejudice to:

(a) COLL 7.2.1 R (Requirement); or

(b) any order or direction made under section 261X (Directions) or 261Y (Applications to the court) of the Act; or

(c) any alternative method (aside from the rules in this section) of winding up a limited partnership scheme provided for by the law.

Solvency statement

(1) Either before notice is given under section 261Q of the Act or before a request is made under section 261W of the Act in relation to the proposals referred to in COLL 7.4A.4 R (4), the authorised contractual...
scheme manager must make a full inquiry into the ACS's (or, in the case of the termination of a sub-fund of a co-ownership scheme, the sub-fund's) affairs, business and property to establish whether the ACS or the sub-fund will be able to meet all its liabilities.

(2) The authorised contractual scheme manager must then, based on the results of this enquiry, prepare and sign a statement either:

(a) confirming that the ACS or the sub-fund of the co-ownership scheme will be able to meet all its liabilities within twelve months of the date of the statement; or

(b) stating that such confirmation cannot be given.

(3) This solvency statement must relate to the ACS's or the sub-fund's affairs, business and property at a date no more than 28 days before the date on which notice is given to the FCA under section 261Q or a request is made under section 261W.

(4) A statement which contains the confirmation under (2) must annex a statement signed by the auditor of the ACS to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with section 261Q of the Act or the request made in accordance with section 261W of the Act.

Manner of winding up or termination

(1) Where COLL 7.4A.4R (3)(f) applies, the depositary must cancel all units in issue and wind up the ACS or terminate the sub-fund of the co-ownership scheme in accordance with the approved scheme of arrangement.

(2) In any other case falling within COLL 7.4A.4 R:

(a) once the ACS falls to be wound up or sub-fund terminated, the depositary must realise the scheme property;

(b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the depositary must cancel all units in issue and distribute the proceeds of that realisation to the unitholders and the authorised contractual scheme manager proportionately to their respective interests in the ACS or sub-fund as at the date, or the date of the relevant event referred to in COLL 7.4A.4 R; and

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the depositary after one year from the date on which they became payable must be paid by the depositary into court (or, in Scotland, as the court may direct), subject to the depositary having a right to retain any expenses properly incurred by him relating to that payment.

(3) For an ACS which is a relevant pension scheme, payments must not be made to unitholders in the ACS. The realisation proceeds must be paid by the depositary in accordance with the contractual scheme deed.
(4) Where the depositary and one or more unitholders agree, the requirement in (2) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those unitholders.

(5) The depositary must distribute the part of the scheme property referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the depositary for ensuring that that or those unitholders bear a proportional share of the liabilities and costs.

(6) On completion of the winding up in respect of the matters referred to in COLL 7.4A.4R (3)(c) to (g), the depositary must notify the FCA in writing and at the same time the authorised contractual scheme manager or depositary must request the FCA to revoke the relevant authorisation order.

7.4A.7 For the purposes of this section, an ACS may be treated as having been wound up or a sub-fund of a co-ownership scheme terminated upon completion, where relevant, of all of the steps in (1) to (3):

(1) payment or adequate provision being made (by the depositary after consulting the authorised contractual scheme manager) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;

(2) the scheme property being realised or distributed in accordance with COLL 7.4A.6R (5); and

(3) the net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Duty to ascertain liabilities

7.4A.8 The authorised contractual scheme manager must use all reasonable endeavours to ensure that all the liabilities of the ACS or the sub-fund of a co-ownership scheme are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the authorised contractual scheme manager:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the authorised contractual scheme manager rejects any claim or liability against the ACS or the sub-fund in whole or part, the authorised contractual scheme manager must immediately send to the claimant written notice of its reasons for doing so.
Accounting and reports during winding up or termination

7.4A.9 R

(1) [deleted]

(2) [deleted]

(3) For any annual accounting period or half-yearly accounting period which begins after commencement of the winding up or termination, a copy of the long report must be supplied free of charge to any unitholder upon request.

(4) The authorised contractual scheme manager must ensure that it keeps unitholders appropriately informed about the winding up or termination, including its likely duration.

(5) The authorised contractual scheme manager must send a copy of the information required by (4) to each person who was a unitholder or the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.4A.6R (2)(b).

(6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

(7) Within four months after the end of the final annual accounting period or the termination of the sub-fund of the co-ownership scheme, the annual reports of the authorised contractual scheme manager and depositary must be published and sent to the FCA.

(8) The authorised contractual scheme manager must, on publication of the annual long report in (7), write to each person who was a unitholder or the first named of joint unitholders immediately before the commencement of winding up or termination to inform them that the annual long report is available free of charge on request.

7.4A.10 G

(1) The effect of COLL 7.4A.9R is that the authorised contractual scheme manager must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with COLL 4.5.14R (Publication and availability of annual and half-yearly long report).

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates to unitholders at six-monthly or more frequent intervals.

Liabilities of the authorised contractual scheme manager

7.4A.11 R

(1) Except to the extent that the authorised contractual scheme manager can show that it has complied with COLL 7.4A.8R (Duty to ascertain liabilities), the authorised contractual scheme manager is personally liable to meet any liability of an ACS or a sub-fund of a co-ownership scheme, of which it is the authorised contractual scheme manager, wound up or terminated under this section (whether or not the winding up of the ACS or the termination of the sub-fund has been completed) that was not discharged before the completion of the winding up or termination.
(2) Where winding up an ACS, if the proceeds of the realisation of the assets attributable or allocated to a particular sub-fund of an umbrella co-ownership scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the authorised contractual scheme manager must pay to the ACS, for the account of that sub-fund, the amount of the deficit, unless and to the extent that the authorised contractual scheme manager can show that the deficit did not arise as a result of any failure by the authorised contractual scheme manager to comply with the rules in COLL.

(3) The liabilities of the authorised contractual scheme manager under this rule create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).

(4) The obligations of the authorised contractual scheme manager under this rule do not affect any other obligation of the authorised contractual scheme manager under these rules or the law.

### Miscellaneous

**7.4A.12**

If:

1. during the course, or as a result, of the enquiry referred to in COLL 7.4A.5R (1) (Solvency statement), the authorised contractual scheme manager becomes of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

2. after winding up or termination has commenced, the authorised contractual scheme manager becomes of the opinion that the ACS or the sub-fund of a co-ownership scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under COLL 7.4A.5R (2)(a);

the authorised contractual scheme manager must immediately present a petition or cause the ACS or sub-fund to present a petition for the winding up of the ACS or sub-fund as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, as modified by the Contractual Scheme Regulations.
7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

7.5.1 (1) The FCA expects that the majority of requests it will receive for the winding up of an authorised fund (under regulation 21(1) of the OEIC Regulations or under sections 256 or 261W of the Act) or termination of a sub-fund will be from authorised fund managers and depositaries who consider that the AUT, ACS, ICVC or sub-fund in question is no longer commercially viable.

(2) It is in consumers' interests to minimise, as far as possible, the period between which the FCA receives such requests and responds to them. To assist the FCA in arriving at a quick decision, based on all the relevant factors, it would be helpful for the FCA to receive the information listed at COLL 7.5.2 G. Further information, however, may be requested by the FCA after receipt of the information, depending on the individual circumstances of the case.

Information to be provided to the FCA

7.5.2 The information referred to in COLL 7.5.1 G is listed below:

(1) the name of the authorised fund or sub-fund;

(2) the size of the authorised fund or sub-fund;

(3) the number of unitholders;

(4) whether dealing in units has been suspended;

(5) why the request is being made;

(6) what consideration has been given to the authorised fund or sub-fund entering into a scheme of arrangement with another regulated collective investment scheme and the reasons why a scheme of arrangement is not feasible;

(7) (a) whether unitholders have been informed of the intention to seek termination, winding up or revocation; and

(b) if not, when they will be informed;

(8) details of any proposed preferential switching rights offered or to be offered to unitholders;
(9) details of any proposed rebate of charges to be made to unitholders who recently purchased units;

(10) where the costs of winding up or termination will fall;

(11) the depositary’s:
   (a) statement whether having taken reasonable care it is certain that a scheme of arrangement is not feasible and explaining what steps have been considered that would result in the authorised fund or sub-fund not needing to wind up or terminate (for example, appointing a replacement authorised fund manager); and
   (b) confirmation that it will not or does not expect to qualify a report made in accordance with COLL 4.5.11 R (Report of the depositary);

(12) the preferred date for the FCA’s determination to revoke authorisation or the date for the commencement of the winding up or termination; and

(13) any additional information or material considered to be relevant to the FCA’s decision under sections 251, 256, 261Q and 261W of the Act or regulation 21 of the OEIC Regulations (as appropriate).
7.6 Schemes of arrangement

Schemes of arrangement: explanation

(1) A proposal that an authorised fund should be involved in a scheme of arrangement is subject to written notice to and approval by the FCA under 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). Effect cannot be given to such a change except in accordance with that section or regulation.

(2) The issue of units in exchange for assets as part of an approved scheme of arrangement is subject to:

- COLL 6.2.5 R and COLL 6.2.6 R (Issue and cancellation of units);
- COLL 6.2.15 R (In specie issue and redemption); and
- COLL 7.6.2 R(Scheme of arrangement: requirements).

(3) COLL 7.6.2 R (3) to (6) apply to a domestic UCITS merger and cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.

Schemes of arrangement: requirements

(1) If a scheme of arrangement is entered into in relation to an authorised fund (“transferor fund”) or a sub-fund of a scheme which is an umbrella (“transferor sub-fund”), an authorised fund manager must ensure that the unitholders of the transferor fund or sub-fund do not become unitholders of units in a collective investment scheme other than a regulated collective investment scheme.

(2) For a UCITS scheme or a sub-fund of a UCITS scheme, (1) applies as if the reference to a regulated collective investment scheme also excludes any recognised scheme other than a scheme recognised under section 264 of the Act (Schemes constituted in other EEA States).

(3) Where, for the purpose of a scheme of arrangement, it is proposed that scheme property of an authorised fund should become the property of another regulated collective investment scheme or sub-fund of a regulated collective investment scheme, the proposal must not be implemented without the sanction of an extraordinary
resolution of the unitholders in the authorised fund, unless (4) applies.

(4) Where, for the purposes of a scheme of arrangement, it is proposed that scheme property attributable to a sub-fund of an umbrella should become the property of another regulated collective investment scheme or of another sub-fund of a regulated collective investment scheme (whether or not of that umbrella), the proposal must not be implemented without the sanction of:

(a) an extraordinary resolution of the unitholders in the sub-fund of that umbrella; and

(b) (unless implementation of the scheme of arrangement is not likely to result in any material prejudice to the interests of the unitholders in any other sub-fund of that umbrella) an extraordinary resolution of the unitholders of units in that umbrella.

(5) If it is proposed that an authorised fund or sub-fund of an umbrella should receive property (other than its first property) as a result of a scheme of arrangement (or an arrangement equivalent to a scheme of arrangement) which is entered into by some other collective investment scheme or sub-fund, or by a body corporate, the proposal must not be implemented without the sanction of an extraordinary resolution of the unitholders in the authorised fund or (as the case may be) of the class or classes of units related to the sub-fund unless (6) applies.

(6) This paragraph (6) applies if the directors of the ICVC or the authorised fund manager and depositary of the AUT or ACS agree that the receipt of the property concerned for the account of the ICVC, AUT or ACS:

(a) is not likely to result in any material prejudice to the interests of the unitholders of the authorised fund;

(b) is consistent with the objectives of the authorised fund or sub-fund; and

(c) could be effected without any breach of a rule in

■ COLL 5(Investment and borrowing powers).
7.7 UCITS mergers

Application

7.7.1 This section applies to an ICVC, an authorised fund manager of an AUT, ACS or ICVC, any other director of an ICVC and the depositary of any such scheme where, in each case, the AUT, ACS or ICVC is a UCITS scheme that is a party to:

(1) a domestic UCITS merger; or
(2) a cross-border UCITS merger.

7.7.2 (1) The effect of COLL 7.7.1 R, and in particular the narrow Glossary definition of domestic UCITS merger which is drafted in accordance with article 2.1(r) of the UCITS Directive, is that this section will not apply to a merger in the United Kingdom between two or more UCITS schemes unless one of them has been the subject of a UCITS marketing notification.

(2) For arrangements to constitute a cross-border UCITS merger, at least two of the relevant UCITS must be:

(a) established in different EEA States; or
(b) established in the same EEA State and be merging into a newly constituted UCITS established in another EEA State.

References to a UCITS scheme

7.7.3 In this section references to:

(1) a UCITS scheme, a merging UCITS, a receiving UCITS or to an EEA UCITS scheme include the sub-fund of any such scheme;
(2) the management company of an EEA UCITS scheme are to the operator of the scheme.

[Note: article 37 of the UCITS Directive]

UCITS mergers

7.7.4 A domestic UCITS merger between two or more UCITS schemes, or a cross-border UCITS merger between one or more UCITS schemes which is or are the merging UCITS and one or more EEA UCITS schemes, is permissible provided:
(1) it is effected in accordance with the requirements of:
   (a) the UCITS Regulations 2011, which include the need for the FCA to have made a prior order approving the proposed merger (which may be made subject to (2)); and
   (b) this chapter; and

(2) in the case of a UCITS scheme that is:
   (a) a merging UCITS in a domestic or cross-border UCITS merger, an extraordinary resolution is approved by unitholders in accordance with COLL 7.6.2 R (3) and (4) (Schemes of arrangement: requirements); and
   (b) a receiving UCITS in a domestic or cross-border UCITS merger, the authorised fund manager and depositary of the AUT or ACS and the directors of the ICVC comply with COLL 7.6.2 R (5) and (6).

[Note: articles 39(1), 39(4) and 44 first paragraph of the UCITS Directive]

Meetings of unitholders

7.7.5
(1) The effect of COLL 7.7.4 R (2)(a) is that the 75% majority that is needed in support for an extraordinary resolution of unitholders to be passed is without prejudice to the presence quorum that is required by COLL 4.4.6 R (Quorum).

(2) Any meeting of unitholders that is needed to give effect to a proposed UCITS merger is subject to the requirements of COLL 4.4 (Meeting of unitholders and service of notices).

UCITS Regulations 2011

7.7.6
(1) The requirements and the process which must be followed to give effect to a proposal for a UCITS merger as specified by Chapter VI of the UCITS Directive (see articles 37 to 48) have been implemented in the United Kingdom by the provisions of Part 4 of the UCITS Regulations 2011. The main features of the regime as set out in those provisions include:
   (a) the different types of merger operation that will be recognised for a UCITS merger;
   (b) the need for the FCA to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the UCITS Regulations 2011, where the arrangements proposed constitute either:
      (i) a domestic UCITS merger; or
      (ii) a cross-border UCITS merger in which the merging UCITS is a UCITS scheme (a UK UCITS);
   (c) the information that has to be given to the FCA in order to obtain the approval under (b);
   (d) the need for draft terms of merger to be prepared;
   (e) the role of the relevant depositaries and auditors;
   (f) the need for appropriate and accurate information to be prepared for the benefit of unitholders;
(g) rights of redemption and suspension of dealing in units in the relevant UCITS; and
(h) the consequences of the proposed merger.

(2) Firms are advised that they do not need to seek approval from the FCA under section 251 (Alteration of schemes and changes of manager or trustee) or 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act or, as the case may be, regulation 21 (The Authority’s approval for certain changes in respect of a company) of the OEIC Regulations where they are required to obtain the prior approval of the FCA to a proposed merger under regulation 9 of the UCITS Regulations 2011.

(3) [deleted]

Common draft terms of merger

7.7.7 (1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger, must in conjunction with any other authorised fund manager or, as the case may be, management company of an EEA UCITS scheme that is a party to the proposed merger, draw up common draft terms of the proposed UCITS merger.

(2) The common draft terms in (1) must set out the following particulars:

(a) an identification of the type of UCITS merger and of the UCITS involved;
(b) the background to and the rationale for the proposed UCITS merger;
(c) the expected impact of the proposed UCITS merger on the unitholders of both the merging UCITS and the receiving UCITS;
(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the UCITS on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the UCITS Regulations 2011;
(e) the calculation method of the exchange ratio;
(f) the planned effective date of the UCITS merger;
(g) the rules applicable respectively to the transfer of assets and the exchange of units; and
(h) in the case of a UCITS merger where the receiving UCITS or the sub-fund is being specially formed for the purpose, the instrument constituting the fund of the newly constituted receiving UCITS.

[Note: article 40(1) of the UCITS Directive]

7.7.8 The management companies of the merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of the UCITS merger.

[Note: article 40(2) of the UCITS Directive]
Verification by the depositary

The depositary of a UCITS scheme that is either a merging UCITS or a receiving UCITS in a proposed UCITS merger must verify that the statements in the common draft terms of merger required under COLL 7.7.7 R (2)(a), (f) and (g), to the extent they relate to the scheme for which it is the depositary, conform with the provisions of the regulatory system and the instrument constituting the fund.

[Note: article 41 of the UCITS Directive]

Information to be given to unitholders

(1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger must ensure that a document containing appropriate and accurate information on the merger is provided to the unitholders of that scheme so as to enable them to:

(a) make an informed judgment about the impact of the proposal on their investment;

(b) exercise their rights under regulation 12 (Right of redemption) of the UCITS Regulations 2011; and

(c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers).

(2) Where a UCITS scheme is the merging UCITS in a domestic UCITS merger or cross-border UCITS merger, its authorised fund manager must provide the information document in (1):

(a) to the unitholders of the merging UCITS and (in the case of a domestic UCITS merger) the receiving UCITS only after the FCA has given its approval to the UCITS merger proposal under regulation 9 of the UCITS Regulations 2011; and

(b) where the receiving UCITS (in the case of a cross-border UCITS merger) is an EEA UCITS scheme, to the unitholders of that scheme only after the Home State regulator of each merging UCITS has authorised the UCITS merger proposal under national measures implementing article 39 of the UCITS Directive;

and in either case must do so at least 30 days before the last date by which unitholders may request repurchase or redemption of their units or, where applicable, conversion without additional charge.

(3) The information document to be provided to the unitholders of the merging UCITS and the receiving UCITS under (1) must include the following:

(a) the background to and the rationale for the proposed UCITS merger;

(b) the possible impact of the proposed UCITS merger on unitholders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the UCITS merger;
(c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:

(i) the right to obtain additional information;

(ii) the right to obtain a copy of the report of the independent auditor or the *depositary* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*;

(iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*; and

(iv) the last date for exercising that right;

(d) the relevant procedural aspects and the planned effective date of the merger; and

(e) a copy of the *key investor information* of the *receiving UCITS*.

(4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant *Host State* in which *units* of the *UCITS scheme* are to be marketed, or in a language approved by its *Host State regulator*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[Note: article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

### General rules regarding the content of merger information to be provided to unitholders

(1) The information *document* that must be provided to *unitholders* under COLL 7.7.10 R (Information to be given to unitholders) by the *authorised fund manager* of a *UCITS scheme* must be written in a concise manner and in non-technical language.

(2) In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.

(3) The information to be provided to the *unitholders* of the *merging UCITS* must meet the needs of investors who have no prior knowledge of the features of the *receiving UCITS* or of the manner of its operation, drawing their attention to the *key investor information* of the *receiving UCITS* and emphasising the desirability of reading it.

(4) The information to be provided to the *unitholders* of the *receiving UCITS* must focus on the operation of the merger and its potential impact on the *receiving UCITS*.

[Note: article 3 of the *UCITS implementing Directive No 2*]
(1) The information provided to unitholders under COLL 7.7.10 R and COLL 7.7.13 R on any proposed merger should reflect the different needs of the unitholders of the merging UCITS and the receiving UCITS and assist their understanding of what is being proposed.

(2) The reference to “conversion” in COLL 7.7.10 R (2) means an exchange of units in the merging UCITS or receiving UCITS for units in another UCITS scheme or EEA UCITS scheme that has similar investment policies and that is managed by the same authorised fund manager or one of its affiliated companies.

[Note: recital (1) of the UCITS implementing Directive No 2]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

(1) Where the merging UCITS is a UCITS scheme, the information document that its authorised fund manager must provide to its unitholders under COLL 7.7.10 R (3)(b) must also include:

(a) details of any differences in the rights of unitholders of the merging UCITS before and after the proposed UCITS merger takes effect;

(b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both schemes, based on the amounts disclosed in their respective key investor information;

(d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

(e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unitholders who previously held units in the merging UCITS;

(f) in cases where costs associated with the preparation and the completion of the merger may be charged to either the merging or the receiving UCITS or any of their unitholders, details of how those costs are to be allocated; and

(g) an explanation of whether the authorised fund manager of the merging UCITS itself intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) The information to be provided under COLL 7.7.10 R (3)(c) must also include:

(a) details of how any accrued income in each scheme is to be treated; and

(b) an indication of how the report of the independent auditor or the depositary may be obtained.

(3) The information to be provided in accordance with COLL 7.7.10 R (3)(d) must include:
(a) where required by Section 7.6.2 R (Schemes of arrangement: requirements), the procedure by which unitholders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently; and

(c) when the merger will take effect in accordance with regulation 13 of the UCITS Regulations 2011.

(4) The information to be provided to the unitholders of the merging UCITS must include:

(a) the period during which those unitholders will be able to continue making subscriptions and requesting redemptions of units in the scheme;

(b) the time when those unitholders not making use of their rights granted under regulation 12 of the UCITS Regulations 2011, within the relevant time limit, will be able to exercise their rights as unitholders of the receiving UCITS; and

(c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the unitholders of the merging UCITS, those unitholders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the UCITS Regulations 2011 within the relevant time limit, will become unitholders of the receiving UCITS.

(5) If a summary of the key points of the merger proposal is provided at the beginning of the document providing information on the merger proposal, it must cross-refer to the parts of the document where further information is provided.

[Note: article 4 of the UCITS implementing Directive No 2]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14 R

(1) Where the receiving UCITS is a UCITS scheme, the information that its authorised fund manager must provide to its unitholders under Section 7.7.10 R (3)(b) must also include an explanation of whether the authorised fund manager expects the merger to have any material effect on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

(2) In addition to (1), the authorised fund manager of the receiving UCITS must provide to its unitholders the information referred to in Section 7.7.13 R (2), (3), and (5).

[Note: article 4 of the UCITS implementing Directive No 2]

7.7.15 G

(1) An authorised fund manager may add other information to that which is required by Section 7.7.10 R to Section 7.7.14 R if it considers that it is relevant in the context of the proposed UCITS merger. For example, it may be appropriate for the information provided in
accordance with COLL 7.7.13 R (3)(a) to contain a recommendation by the respective authorised fund manager of an AUT or ACS or the directors of an ICVC as to the course of action the unitholders should take.

(2) Where an authorised fund manager chooses to include a summary of the key points as allowed by COLL 7.7.13 R (5), its inclusion does not relieve the authorised fund manager of its obligation to avoid the use of long or technical explanations in the rest of the document.

[Note: recitals (2) and (3) and article 4(6) of the UCITS implementing Directive No 2]

**Key investor information**

7.7.16 The authorised fund manager of a merging UCITS must provide an up-to-date version of the key investor information of the receiving UCITS to its existing unitholders.

[Note: article 5(1) of the UCITS implementing Directive No 2]

7.7.17 (1) Where a UCITS scheme is the receiving UCITS in a cross-border UCITS merger, its authorised fund manager must ensure that an up-to-date version of the key investor information document of the receiving UCITS is made available to the management company of the merging UCITS for the purpose of providing it to investors in that UCITS.

(2) Where the key investor information document of the receiving UCITS has been amended for the purpose of (1), the authorised fund manager of the receiving UCITS must also provide it to all its existing unitholders.

[Note: article 5(2) of the UCITS implementing Directive No 2]

**New unitholders**

7.7.18 Between the date when the information required under COLL 7.7.10 R is provided to unitholders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS must be provided to each person who purchases or subscribes for units in either the merging UCITS or the receiving UCITS or who asks to receive copies of the instrument constituting the fund, prospectus or key investor information of either scheme.

[Note: article 6 of the UCITS implementing Directive No 2]

**Method of providing merger information to unitholders**

7.7.19 The authorised fund manager of the merging UCITS and the receiving UCITS must provide the information required by COLL 7.7.10 R to COLL 7.7.14 R to unitholders in a durable medium.

[Note: article 7 of the UCITS implementing Directive No 2]
Merger costs

7.7.20 The authorised fund manager of a UCITS scheme that is either a merging UCITS or a receiving UCITS must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the UCITS merger are not charged to either scheme or to any of its unitholders.

[Note: article 46 of the UCITS Directive]

Effective merger date, exchange ratio calculation date and publication of merger

7.7.21 (1) In a domestic UCITS merger, the effective date of the merger will be the date specified by the FCA in its order authorising the proposed merger in accordance with regulation 9 of the UCITS Regulations 2011.

(2) For a UCITS scheme which is the receiving UCITS in a cross-border UCITS merger, the effective date of the merger will be the date agreed by the FCA and the merging UCITS’ Home State regulator.

(3) For a UCITS scheme which is the receiving UCITS in a domestic UCITS merger or a cross-border UCITS merger:

(a) the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and

(b) the FCA will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the Act in accordance with regulation 14 of the UCITS Regulations 2011.

(4) For a UCITS scheme which is the merging UCITS in a cross-border UCITS merger, the dates referred to in (2) and (3)(a) will be determined by the laws of the receiving UCITS Home State. Those dates will be after the date on which the merger proposal has been approved in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers).

[Note: article 47 of the UCITS Directive]

Confirmation obligation on completion of a UCITS merger

7.7.22 The authorised fund manager of a UCITS scheme that is the receiving UCITS in either a domestic or cross-border UCITS merger must confirm in writing to the depositary of the UCITS scheme and the FCA that the merger transfer is complete.

[Note: article 48(4) of the UCITS Directive]

7.7.23 Regulation 13 of the UCITS Regulations 2011 sets out the conditions that must be fulfilled for a merger transfer to be considered complete.