

Chapter 7

Suspension of dealings,
termination of authorised
funds and side pockets

7.1 Introduction

Application

7.1.1

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(1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of an *ICVC*, a *depository* of an *ICVC*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* 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*.

Table of application

7.1.2

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This table belongs to ■ COLL 7.1.1 R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Deposit-ary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Deposit-ary of an AUT or ACS</i>
7.1.1	x	x	x	x	x	x
7.1.3	x	x	x	x	x	x
7.2.-3*		x		x	x	x
7.2.-2*		x		x	x	x
7.2.-1*		x		x	x	x

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Au- thorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
7.2.1	x	x		x	x	x
7.3.1	x	x	x	x		
7.3.2	x	x	x	x		
7.3.3	x	x	x			
7.3.4	x	x	x			
7.3.5		x	x			
7.3.6	x	x	x			
7.3.7	x	x	x	x		
7.3.8		x	x			
7.3.9		x				
7.3.10	x	x	x	x		
7.3.11		x				
7.3.12	x	x				
7.3.13 (1)		x	x			
7.3.13 (2)			x	x		
7.4*					x	x
7.4A*					x	x
7.5		x	x	x	x	x
7.6		x	x	x	x	x
7.7	x	x	x	x	x	x
7.8	x	x	x	x	x	x
Notes:	(1)	"x" means "applies", but not every paragraph in every <i>rule</i> will necessarily apply.				
	(2)	*COLL 7.4 does not apply to the <i>authorised contractual scheme manager</i> or <i>depositary</i> of an <i>ACS</i> .				
	(3)	*COLL 7.4A does not apply to the <i>manager</i> or <i>depositary</i> of an <i>AUT</i> .				
	(4)	COLL 7.2.-3R to 7.2.-1R apply only to the <i>authorised fund manager</i> and <i>depositary</i> of a <i>non-UCITS retail scheme</i> .				
	(5)	COLL 7.8 (Side pockets) applies only to <i>UCITS schemes</i> and <i>non-UCITS retail schemes</i> in which the <i>authorised fund manager</i> intends to establish (or has established) a <i>side pocket class</i> . The <i>rules</i> in COLL 7.8 do not apply to a <i>regulated money market fund</i> .				

Purpose

7.1.3



(1) This chapter helps to achieve the *statutory objective* of protecting investors by ensuring the *authorised fund manager* does not sell 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.-3R, ■ COLL 7.2.-2R, ■ COLL 7.2.-1R, and ■ COLL 7.2.1 R set 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.
- (3) This chapter also helps to achieve the *statutory objectives* of protecting *consumers* and protecting and enhancing the integrity of the *UK* financial system, by enabling *unitholders* or potential *unitholders* in a *UCITS scheme* or *non-UCITS retail scheme* with *affected investments* to continue to *deal* in *units* representing assets held in the *scheme property* that are not *affected investments*.

7.2 Suspension and restart of dealings

Requirement

7.2.-3

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- (1) This *rule* applies to the *authorised fund manager* of a *non-UCITS retail scheme* if at any time:
 - (a) a *standing independent valuer* has expressed material uncertainty in accordance with VPS 3 paragraph 2.2(o) and the guidance at VPGA10, RICS Valuation Global Standards 2017 (The Red Book) (effective from 1 July 2017), about the value of one or more immovables under management and that material uncertainty applies to at least 20% of the value of the *scheme property*; or
 - (b) the *authorised fund* invests at least 20% of the value of the *scheme property* in *units* of one or more other *authorised funds* for which *dealings in units* have been temporarily suspended under (2).
- (2) As soon as possible and in any event by the end of the second *business day* after the day on which this *rule* starts to apply under (1), the *authorised fund manager* must temporarily suspend *dealings in units* in the *authorised fund* unless (3) applies.
- (3) *Dealings in units* in the *authorised fund* may continue provided that:
 - (a) as soon as possible and in any event by the end of the second *business day* after the day on which this *rule* starts to apply under (1), the *authorised fund manager* and the *depository* agree that *dealings in units* in the *authorised fund* should continue;
 - (b) the *authorised fund manager* and the *depository* have a reasonable basis for determining that a temporary suspension of *dealings in units* would not be in the best interests of *unitholders* in the *authorised fund*; and
 - (c) the *authorised fund manager* and the *depository* do not rely solely on a fair value price adjustment when making their determination under (b).

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- (1) This *rule* applies where the *authorised fund manager* of a *non-UCITS retail scheme* is required to temporarily suspend *dealings in units* in the *authorised fund* under ■ COLL 7.2.-3R(2) or ■ COLL 7.2.-1R(3).
- (2) The *authorised fund manager* must notify the *depository* before suspending *dealings in units* in the *authorised fund*.
- (3) During the suspension, the *authorised fund manager* must follow the requirements set out in the following provisions, where applicable:

- (a) ■ COLL 7.2.1R(2);
- (b) ■ COLL 7.2.1R(2A);
- (c) ■ COLL 7.2.1R(2B);
- (d) ■ COLL 7.2.1R(2C);
- (e) ■ COLL 7.2.1R(3);
- (f) ■ COLL 7.2.1R(4A);
- (g) ■ COLL 7.2.1R(5); and
- (h) ■ COLL 7.2.1R(6).

(4) *Dealings in units* must restart as soon as reasonably practicable after:

- (a) the *standing independent valuer's* material uncertainty assessment applies to less than 20% of the value of the *scheme property*; and
- (b) the *scheme's depositary* gives its approval for the temporary suspension to be removed.

(5) If a *non-UCITS retail scheme* operates *limited redemption arrangements* and a suspension has prevented *dealings in units* at a *valuation point*, the *authorised fund manager* must declare an additional *valuation point* as soon as possible after the restart of *dealings in units*.

(6) 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 the *authorised fund manager* considers that a suspension of *dealings in units* of some but not all *classes* of *units* is in the best interest of all the *unitholders* of that *authorised fund* or *sub-fund*.

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- (1) This *rule* applies where the *authorised fund manager* and the *depositary* agree that *dealings in units* in the *authorised fund* should continue under ■ COLL 7.2.-3R(3) and, if relevant, following a review under this *rule*.
- (2) During the period of material uncertainty (see (8) below), the *authorised fund manager* and the *depositary* must review their agreement not to suspend *dealings in units* in the *authorised fund* at least every 14 days.
- (3) Following such a review the *authorised fund manager* must temporarily suspend *dealings in units* in the *authorised fund* unless (4) applies.
- (4) *Dealings in units* in the *authorised fund* may continue provided that:
 - (a) the *authorised fund manager* and the *depositary* agree that *dealings in units* in the *authorised fund* should continue;

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- (b) the *authorised fund manager* and the *depository* have a reasonable basis for determining that a temporary suspension of *dealings* in *units* would not be in the best interests of *unitholders* in the *authorised fund*; and
 - (c) the *authorised fund manager* and the *depository* do not rely solely on a fair value price adjustment when making their determination under (b).
- (6) The *authorised fund manager* must inform the *FCA* of the results of each review.
- (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 the *authorised fund manager* considers a suspension of *dealings* in *units* of some but not all *classes* of *units* is in the best interest of all the *unitholders* of that *authorised fund* or *sub-fund*.
- (8) In this *rule*, a “period of material uncertainty” is any period during which one or both of ■ COLL 7.2.-3R(1)(a) and (b) applies.
- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* 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 *depository* 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 *depository* 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 the *FCA*.
- (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 *depository* 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*.
- (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

7.2.1A

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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

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- (-1) The *guidance* in (1), (1A) and (1B) does not apply in circumstances where an *authorised fund manager* is required to temporarily suspend *dealings in units* in an *authorised fund* under ■ COLL 7.2.-3R or ■ COLL 7.2.-1R.
- (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*.
- (1A) Except in the case of *FIIAs* (for which see (1B) below), 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 *depository* 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 *depository* determine that it is in the best interests of *unitholders* to suspend *dealing*, they should ensure that any alternative courses of action have been discounted.
- (1B) In the case of *FIIAs*, there may be circumstances where suspension is genuinely in the best interests of *unitholders*; for example, where orders received for *redemptions* of *units* at the next valuation period cannot be executed without significantly depleting the *scheme's*

liquidity, and/or without selling *scheme property* at a substantial discount to its open market value.

- (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

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- (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.

7.3.2

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

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

7.3.3

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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))

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

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

7.3.4

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- (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.

- (1A) A *sub-fund* must not:
 - (a) be terminated except under this section; or
 - (b) wound up except 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

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- (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 *depository* 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

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- (1) Winding up or 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

7.3.7

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- (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 *depository* 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 *depository* 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 *depository* 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

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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 *depository* 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 *depository* 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 *depository* 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]

7.3.7A

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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

7.3.8

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- (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

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- (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

R

- (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

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[deleted]

Miscellaneous

7.3.13

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(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 *depository* 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

G

- (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.

7.4.2

R

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

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

7.4.2A

G

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))

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

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

7.4.3

R

- (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

7.4.4

R

- (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*.

7.4.4A

G

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.....

7.4.5

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.

- (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.

7.4.6

G

- (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

G

- (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 *depository* 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 depository). 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 **R**

- (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*; and
 - (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 **G**

This table belongs to ■ COLL 7.4A.1G (5) (Explanation of ■ COLL 7.4A)

Summary of the main steps in winding up an *ACS* or terminating a *sub-fund* of a *co-ownership scheme* under *FCA rules*

Notes: N = Notice to be given to the *FCA* under section 261Q of the *Act* in a section 261Q case.

R = Request to wind up the *scheme* under section 261W of the *Act* in a section 261W case.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period

Step number	Explanation	When	<i>COLL rule</i> , (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 days or R-28 days	7.4A.5R(2)
2	Send audited solvency statement to the <i>FCA</i> with copy to <i>depository</i> .	By N + 21 days or by R + 21 days	7.4A.5R(4) and (5)

3	<p>In a section 261Q case:</p> <ul style="list-style-type: none"> - the <i>authorised contractual scheme manager</i> receiving FCA approval; - or one month having passed after submitting the requisite notice under section 261Q of the Act without the <i>authorised contractual scheme manager</i> or <i>depository</i> having received from the FCA a warning notice under section 261R in respect of the proposal. <p>In a section 261W case, the <i>authorised contractual scheme manager</i> or <i>depository</i> 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.</p>	<p>N + one <i>month</i> or R + one <i>month</i></p>	<p>Section 261Q of the Act (in a section 261Q case) 7.4A.4R(3)(c) to (e) (in a section 261W case)</p>
4	<p>Normal business ceases; notify <i>unitholders</i></p>	E	7.4A.4R
5	<p><i>Depository</i> to realise and distribute proceeds</p>	ASAP after E	7.4A.6R(1)-(5)
6	<p>Send annual long report of <i>authorised contractual scheme manager, depository</i> and auditor to the FCA</p>	<p>Within 4 <i>months</i> of FAP</p>	7.4A.9R(7)

7	Request FCA to revoke relevant <i>authorisation order</i>	On completion of W/U	7.4A.6R(6)
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When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

7.4A.4

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- (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 *depository* 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 *depository* 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 depository) 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 *depository*;

- (d) in response to a request to the *FCA* by the *authorised contractual scheme manager* or the *depository* 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 *depository* 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

7.4A.5

R

- (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.4R (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 *depository* 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

7.4A.6

R

- (1) Where ■ COLL 7.4A.4R (3)(f) applies, the *depository* 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 *depository* 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 *depository* 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 *depository* after one year from the date on which they became payable must be paid by the *depository* into court (or, in Scotland, as the court may direct), subject to the *depository* 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 *depository* in accordance with the *contractual scheme deed*.

- (4) Where the *depository* 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 *depository* 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 *depository* 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 *depository* must notify the *FCA* in writing and at the same time the *authorised contractual scheme manager* or *depository* must request the *FCA* to revoke the relevant *authorisation order*.

7.4A.7

G

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 *depository* 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

R

- (1) 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 *depository* 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.8 R (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 **R**

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

G

- (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 *depositories* 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

G

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 *depository'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 depository);
- (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

7.6.1

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- (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*. Arrangements constituting any such merger are in addition subject to the requirements of ■ COLL 7.7 (UCITS mergers).

Schemes of arrangement: requirements

7.6.2

R

- (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* which is authorised under the *UCITS Directive* in an *EEA State* but was not a 'recognised scheme' under section 264 of the *Act* (Schemes constituted in other EEA States) immediately before *IP completion day*.
- (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 *depository* 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

R

This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, any other *director* of an *ICVC* and the *depository* 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*.
- (2) [deleted]

7.7.2

G

(1) The effect of ■ COLL 7.7.1 R, and in particular the narrow *Glossary* definition of *domestic UCITS merger*, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them was the subject of a *UCITS marketing notification* before *IP completion day*.

- (2) [deleted]

References to a UCITS scheme

7.7.3

R

In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS* or to a *receiving UCITS* include the *sub-fund* of any such *scheme*.
- (2) [deleted]

[Note: article 37 of the *UCITS Directive*]

UCITS mergers

7.7.4

R

A *domestic UCITS merger* between two or more *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*, 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*, the *authorised fund manager* and *depository* 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

G

- (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

G

- (1) The requirements and the process which must be followed to give effect to a proposal for a *domestic UCITS merger* are in Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:
 - (a) the merger must be a *domestic UCITS merger* which takes the form of a scheme of arrangement;
 - (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*;
 - (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 *depositories* 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

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(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* draw up common draft terms of the proposed *UCITS* merger.

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

- (a) 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

G

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

- 7.7.9** **R** 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

- 7.7.10** **R**
- (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* 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*,
 - (b) [deleted]

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 *depository* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011*;
- (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*; 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 *EEA State* in which *units* of the *UCITS scheme* have been marketed, or in a language approved by the overseas regulator in that *EEA State*. 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

7.7.11

R

- (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) [deleted]
- (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*]

7.7.12

G

- (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* 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**

7.7.13

R

- (1) The information *document* that the *authorised fund manager* of a *merging UCITS* 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 *depository* 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 ■ COLL 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) The information that the *authorised fund manager* of a *receiving UCITS* must provide to its *unitholders* under ■ COLL 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 ■ COLL 7.7.13 R (2), ■ (3), and ■ (5).

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

7.7.15

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- (1) An *authorised fund manager* may add other information to that which is required by ■ COLL 7.7.10 R to ■ COLL 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 **R** 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 **R** [deleted]

New unitholders

- 7.7.18 **R** 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 **R** 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 **R** 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

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- (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) [deleted]
- (3) For the *receiving UCITS* in a *domestic 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) [deleted]

[Note: article 47 of the *UCITS Directive*]

Confirmation obligation on completion of a UCITS merger

7.7.22

R

The *authorised fund manager* of the *receiving UCITS* in a *domestic UCITS merger* must confirm in writing to the *depository* of the *UCITS scheme* and the *FCA* that the merger transfer is complete.

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

7.7.23

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

7.8 Side pockets

Application

7.8.1

R

- (1) Subject to (2), this section applies to:
 - (a) the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
 - (b) any other *director* of an *ICVC*;
 - (c) the *depository* of an *AUT*, *ACS* or an *ICVC*; and
 - (d) an *ICVC*,which is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) This section does not apply to a *scheme* which is a *regulated money market fund*.

7.8.2

G

- (1) This section sets out the terms on which the *authorised fund manager* of a *scheme* holding *affected investments* can segregate those *affected investments* from the other assets held in the *scheme property* by establishing a *side pocket class*.
- (2) The purpose of the *rules* in this section is to advance the *FCA's* consumer protection and integrity objectives (see s1B(3) of the *Act*) by helping *authorised fund managers* deal with the consequences of the Russian invasion of Ukraine.
- (3) The *rules* in this section apply other *rules* in *COLL*, where necessary, with appropriate modifications, as well as imposing certain additional requirements.

Financial sanctions regimes relating to Russia

7.8.3

G

- (1) The definition for a 'sanctioned investment' in the *Glossary* (which is incorporated in the definition for 'affected investment') relates to the financial sanctions regimes of the Group of 7 (G7) countries comprising Canada, France, Germany, Italy, Japan, the *United Kingdom* and the United States of America, plus the *EU*, as those sanctions regimes relate to Russia.
- (2) Before deciding whether to create a *side pocket class* and determining the arrangements under which the *class* is to operate, the *authorised fund manager* will need to understand the legal requirements and obligations that apply under the relevant financial sanctions regimes. The *authorised fund manager* will need to be

satisfied that creation of the *side pocket class* and the operational arrangements for the *class* will comply with those regimes.

- (3) The *UK's* financial sanctions regime is set out in the Russia (Sanctions) (EU Exit) Regulations 2019. The Regulations are available at <https://www.legislation.gov.uk/uksi/2019/855/contents>. The *UK* regime prohibits certain types of activity and conduct, including dealing with funds and economic resources, and dealing with transferable securities and money-market instruments, subject to certain exceptions. Contravention of these prohibitions constitutes a criminal offence.
- (4) The Office of Financial Sanctions Implementation (OFSI) (part of HM Treasury) helps to ensure that the *UK* financial sanctions regime is properly understood, implemented and enforced in the *United Kingdom*.

Conditions for creating a side pocket class

- (1) If all the conditions in (2) are satisfied, the *authorised fund manager* of a *scheme* holding *affected investments* in the *scheme property* may, after consulting with the *depository*, create a *side pocket class*.
- (2) The conditions are:
 - (a) The *authorised fund manager* has determined that the *affected investment* in (1) is:
 - (i) a *sanctioned investment*;
 - (ii) a *unit* in a *collective investment scheme* or a *share* in an *AIF* within the meaning of paragraph (2)(b)(vii) of the definition of 'affected investment'; or
 - (iii) to the extent not in (i) or (ii), an *affected investment* for which there are no accurate, reliable and regular prices.
 - (b) The *authorised fund manager* has determined that:
 - (i) creating the *side pocket class* will protect the interests of *unitholders*;
 - (ii) the rights of any *unit* in a *side pocket class* will not be unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any other *class* of *units* in the *scheme*;
 - (iii) the *issue* of *units* in the *side pocket class* will be in the best interests of *unitholders*, the *authorised fund* and the integrity of the market; and
 - (iv) all the *unitholders* in the *authorised fund* will be treated fairly.
 - (c) The *instrument constituting* the *fund* and the *prospectus*:
 - (i) provide for the *issue* of *units* in a *side pocket class*; and
 - (ii) set out the terms on which that *class* will operate, in accordance with the *rules* in, and applied by, this section (see in particular ■ COLL 7.8.13R (Modified application of COLL 4.2 (Pre-sale notifications))).

- (3) Before making the determination in (2)(b), the *authorised fund manager* must consider:
 - (a) at least each of the matters specified in ■ COLL 7 Annex 1 (Matters to be considered by the authorised fund manager before creating a side pocket class); and
 - (b) whether it would be in the interest of all the *unitholders* in the *authorised fund* to suspend *dealings* in *units* in accordance with ■ COLL 7.2.1R (Requirement) instead of creating a *side pocket class*.
- (4)
 - (a) The decision to create a *side pocket class* pursuant to (1) must be taken by the *authorised fund manager's governing body*.
 - (b) The *authorised fund manager* must make a record of the *governing body's* decision and the reasons for it.

Side pocket classes

7.8.5

R

- (1) The *authorised fund manager* may:
 - (a) issue *units* in a new *class* to *unitholders* in the *authorised fund*; or
 - (b) convert a *unit* in an existing *class* into *units* in one or more new *classes*.
- (2) Where the *authorised fund manager* has taken an action pursuant to (1)(a) or (1)(b), it must determine the *price* of *units* of each existing and new *class* by reference to a valuation of the portions of *capital property* and *income property* represented by either:
 - (a) one or more *affected investments* held in the *scheme property*; or
 - (b) the *scheme property* excluding some or any such *affected investments*,as provided for in the *instrument constituting the fund* and the *prospectus*.
- (3) A new *class* within (2)(a) is referred to as a 'side pocket class'.
- (4) The *authorised fund manager* must determine the date and time on which the *units* in the new *class* are to be *issued*.
- (5) On the date and time specified in (4):
 - (a) the combined net asset value of all *units* of the new *class* and all *units* of the existing *class*; or
 - (b) the combined net asset value of any new *classes* of *unit issued* by conversion from an existing *class* of *unit*,must equal the net asset value of all *units* of the *class* or *classes* that existed immediately before the specified date and time.
- (6) On the date and time specified in (4), the number of *units* held by a *unitholder* in a new *class* must be proportionate to the number of *units* held by them in an existing *class* immediately before such date and time.

7

7.8.6 **R** The *prospectus* of the *authorised fund* must limit the *issue* of *units* in a *side pocket class* after the date and time specified in **■ COLL 7.8.5R(4)** (see **■ COLL 7.8.30R(5)** (Modified application of COLL 6.2 (Dealing))).

7.8.7 **G**

- (1) An *authorised fund manager* intending to *issue units* in a new *class* will need to consider the effect of section 235(4) of the *Act*. In broad terms, this provides that if the contributions of the *participants* and the profits or income out of which payments are to be made to them are pooled in relation to separate parts of the *scheme property*, the arrangements are not to be regarded as constituting a single *collective investment scheme* unless the participants are entitled to exchange rights in one part for rights in another (see section 235(4) of the *Act* (Collective investment schemes)).
- (2) The *authorised fund manager* of an *ICVC* will also need to consider the effect of section 236(3) (Open-ended investment companies) of the *Act*. **■ PERG 9.6** (The investment condition (section 236(3) of the *Act*): general) sets out the *FCA's* view of this provision. In particular, **■ PERG 9.6.3G** and **■ PERG 9.6.4G** provide *guidance* on situations where an *ICVC* issues shares or securities that may not satisfy the investment condition.

Allocation of scheme property to a side pocket class

7.8.8 **G**

- (1) The *authorised fund manager* will need to consider carefully how to apply a fair accounting treatment when a *side pocket class* is created.
- (2) Where the *unit price* is determined only by reference to *affected investments* that are themselves valued at or close to zero, then a *unit* in the *side pocket class* will have minimal value. Where a portion of the *income property* of the *scheme* is attributable to *affected investments*, the unit price of the *side pocket class* should include that element of income.
- (3) The *authorised fund manager* may determine that a proportion of uninvested cash held in the *capital property* of the *scheme* should be attributed to the *side pocket class*, as a provision against costs and charges attributable to the *class* in the future. This will depend on the *authorised fund manager's* policy for the treatment of costs and charges (see also **■ COLL 7.8.36R** (Modified application of COLL 6.7 (Payments))). If the *side pocket class* has an overdrawn cash position, it should not be netted off against a positive cash position attributable to other *classes*.
- (4) Some *authorised fund managers* may wish to use *derivatives* and forward transactions within the *side pocket class* to hedge exposure to currency fluctuations affecting asset valuations, especially if the *affected investments* acquire value at a later point. *Authorised fund managers* may also wish to replicate currency *class* hedging arrangements where these already exist. Such activities will require an allocation of *capital property* to cover transaction costs and margin requirements.
- (5) Decisions whether to undertake the activities in (4) should be taken by the *authorised fund manager* based on its judgment of *unitholders' reasonable expectations* and future best interests. The

authorised fund manager should take particular care to ensure its risk management process is properly applied to analyse the possible harm that could arise from such transactions. See also ■ COLL 7.8.26R (Side pockets: modified application of COLL 5 (Investment and borrowing powers)) and the related guidance in ■ COLL 7.8.27G.

Costs and charges for a side pocket class

7.8.9

G

- (1) The *FCA* accepts that a *side pocket class* should bear a proportionate share of the costs and charges which arise and are incurred for the benefit of all *unitholders*, such as depositary expenses and fees, audit fees, and regulatory charges. The *authorised fund manager*, in managing and administering the *authorised fund*, will also incur necessary expenses which it may recover from the *scheme property*. The *FCA* would not expect *unitholders* in *classes* without any interest in the *affected investments* to cross-subsidise the costs and charges of managing the *side pocket class*. Such costs and charges may be recovered in the first instance out of available income or capital attributable to the *side pocket class*, depending on the normal charging policy set out in the *prospectus*.
- (2) Since it is not possible to know whether any income from *affected investments* will be receivable on an ongoing basis in future, the *authorised fund manager* will have to determine how to account for such income and for expenses attributable to the *side pocket class*. The *authorised fund manager* may decide to accrue such costs and charges indefinitely until sufficient cash is available to cover them, or to waive some charges or pay them from its own resources. The *governing body* of the *authorised fund manager* should consider this when evaluating whether to proceed with creating a *side pocket class*.
- (3) The *governing body* should also consider whether the *authorised fund manager* should be remunerated for managing a *class* that is valued largely or solely by reference to *affected investments*. To ensure fair treatment of all *unitholders* in the *fund*, it may be more appropriate for the *authorised fund manager* to forego some or all remuneration from the *side pocket class*.
- (4) An *authorised fund manager* may be able to charge a fee for managing the *side pocket class*, but the fee should fairly reflect the services provided and activities carried on by the *authorised fund manager* for *unitholders* in that *class*. The fee should not exceed what is reasonable to cover the necessary costs and charges of the *authorised fund manager* (including any *firm* which has been given the mandate to *manage investments* for the *scheme* under ■ COLL 6.6.15AR (Committees and delegation)) and to reward the amount of work entailed in seeking opportunities over time to dispose of the *affected investments* in an orderly way. The *FCA* would expect such a fee to be less than the *authorised fund manager's* charges for managing the rest of the *scheme property*.

Application of COLL 3 (Constitution)

7.8.10

R

The *rules* and *guidance* in ■ COLL 3 (Constitution) apply to an *authorised fund* with a *side pocket class* subject to the modifications specified in ■ COLL 7.8.11R.

7.8.11 **R** In ■ COLL 3.3.5R (Rights of unit classes), paragraphs (2) and (3) do not prohibit the *issue* of *units* in a *side pocket class*.

Application of COLL 4 (Investor relations): General

7.8.12 **R** The *rules* and *guidance* in ■ COLL 4 (Investor relations) apply to an *authorised fund* with a *side pocket class*, subject to:

- (1) the modifications in ■ COLL 7.8.13R to ■ COLL 7.8.21R; and
- (2) the additional requirements in ■ COLL 7.8.22R and ■ COLL 7.8.24R.

Modified application of COLL 4.2 (Pre-sale notifications)

7.8.13 **R** In relation to a *side pocket class*, the information required to be included in the *prospectus* under ■ COLL 4.2.5R (Table: contents of prospectus) must cover at least the additional matters set out in (1) to (4).

- (1) In ■ COLL 4.2.5R(5) (Characteristics of units):
 - (a) a general description of the *affected investments* to be allocated to the *side pocket class* (or *side pocket classes*);
 - (b) an explanation of how the *scheme property* (both *capital property* and *income property*) will be allocated between the *side pocket class* (or *side pocket classes*) and other *classes* at the outset and on an ongoing basis; and
 - (c) information which explains:
 - (i) that the *authorised fund manager* will seek to dispose of all the *affected investments* over time, on terms that it judges to be in the best interests of *unitholders*; and
 - (ii) that the *units* in the *side pocket class* (or *side pocket classes*) will be *cancelled* when this has been done, indicating where possible what options may be offered to *unitholders* for exiting the *side pocket class* (or *side pocket classes*) under the process.
- (2) In ■ COLL 4.2.5R(16) (Valuation and pricing of scheme property), the frequency at which:
 - (a) *affected investments* allocated to the *side pocket class* will be valued; and
 - (b) the *prices* of *units* in the *side pocket class* will be calculated, where these differ from other *classes* of the *scheme*.
- (3) In ■ COLL 4.2.5R(17) (Dealing):
 - (a) that the *issue* of *units* in the *side pocket class* is limited, and the circumstances and conditions for *issuing* them;
 - (b) a statement of when the *dealing days* for the *side pocket class* will be;
 - (c) details of any cut-off point for the receipt of *dealing* instructions prior to the *valuation point* for the relevant *dealing day*; and
 - (d) if applicable, details of:

- (i) any special arrangements put in place for *redemptions* of *units* in the *side pocket class*, including any extended time period for settlement and any facility to pay the proceeds of *redemption* to a *person* other than the *unitholder*;
- (ii) whether *redemption* proceeds can be reinvested in *units* of other *classes* of the *scheme* or in *units* of other *schemes*; and
- (iii) any facility for a *unitholder* to dispose of an interest in *units* by transferring title to them to another *person* (other than by operation of law), as a donation or for financial consideration.

(4) In ■ COLL 4.2.5R(27)(b) (Additional information):

- (a) an explanation that there is no certainty that any *affected investment* will ever recover its value to a significant extent, or at all, and that the *authorised fund manager* may be unable to realise any material value for *unitholders* in respect of *units* held in the *side pocket class*;
- (b) if applicable, that the costs and charges for operating the *side pocket class* may significantly erode the returns from any realisable value from the *affected investments* over time; and
- (c) whether the *authorised fund manager* has undertaken to bear all the costs and charges associated with operating the *side pocket class* from its own resources and, if not, a statement explaining:
 - (i) the risk that costs and charges might cause the cash position of the *side pocket class* to become overdrawn;
 - (ii) that a liability arising as a result of (i) would be accounted for against the *scheme property* allocated to the other *classes* in the *scheme*; and
 - (iii) the steps the *authorised fund manager* would take to ensure *unitholders* in other *classes* do not bear such a liability.

Modified application of COLL 4.3 (Approvals and notifications)

- 7.8.14 **R** The *authorised fund manager* need not treat the creation of a *side pocket class* as a fundamental change for the purposes of ■ COLL 4.3.4R (Fundamental change requiring prior approval by meeting) provided the *authorised fund manager* is satisfied on reasonable grounds that the foreseeable costs of this course of action are not disproportionate to the benefits.
- 7.8.15 **G** The *guidance* in ■ COLL 4.3.5G (Guidance on fundamental change) should be read in accordance with the modification in ■ COLL 7.8.14R.
- 7.8.16 **R** If the *authorised fund manager* considers that the creation of a *side pocket class* constitutes a significant change, the *authorised fund manager*:
- (1) may, but need not, give prior written notice to *unitholders* under ■ COLL 4.3.6R(1) (Significant change requiring pre-event notification); and
 - (2) is not required to comply with ■ COLL 4.3.6R(3).

7.8.17 **G** The *guidance* in ■ COLL 4.3.7G (Guidance on significant changes) should be read in accordance with the modification in ■ COLL 7.8.16R.

7.8.18 **G** Before announcing its intention to create a *side pocket class*, the *authorised fund manager* should have regard to the reasonable operational needs of *intermediate unitholders* and any reasonable periods of time they will need to establish processes and procedures and communicate information to those *clients* for whom the *intermediate unitholder* acts as a nominee in relation to *units* in the *scheme*.

Modified application of COLL 4.4 (Meetings of unitholders and service of notices)

7.8.19 **R**

- (1) ■ COLL 4.4.8R (Voting rights) applies to an *authorised fund* with a *side pocket class* with the modifications set out in (2) and (3) below.
- (2) Before a resolution is put to a vote at a *unitholder* meeting, it must be made clear whether the resolution relates to or affects:
 - (a) all the *classes* of *unit* in the *authorised fund*;
 - (b) those *classes* of *unit* in the *authorised fund* excluding the *side pocket class*; or
 - (c) only the *side pocket class*.
- (3) On a poll, the votes of a *unitholder* may only be counted to the extent that the *unitholder's* voting rights are attached to *units* in the *class* or *classes* to which the resolution relates or which the resolution affects in accordance with (2).

7.8.20 **G**

- (1) The *authorised fund manager* will need to ensure that the *instrument constituting the fund* and the *prospectus* reflect the modified application of ■ COLL 4.4.8R as set out in ■ COLL 7.8.19R.
- (2) ■ COLL 7.8.19R modifies the application of ■ COLL 4.4.8R but does not affect the other matters dealt with in ■ COLL 4.4, such as ■ COLL 4.4.6R (Quorum).

Modified application of COLL 4.7 (Key investor information and marketing communications)

7.8.21 **R** The *rules* in ■ COLL 4.7.2R (Key investor information) do not require an *authorised fund manager* to draw up a *key investor information document* or a *NURS-KII document* in relation to a *side pocket class*.

Additional information for unitholders on the creation of a side pocket class

7.8.22 **R** The *authorised fund manager* must provide a written notification to *unitholders* which meets the requirements of (1) to (3).

- (1) The notification must be provided to *unitholders* in a timely way, either shortly before the *side pocket class* is created or as soon as practicable afterwards.

- (2) If the *unitholder* has a financial adviser, the requirement to provide the notification in (1) may be satisfied by sending it to the financial adviser.
- (3) The notification must explain in a comprehensive manner:
 - the reasons for the *authorised fund manager's* decision to create a *side pocket class*, including the expected benefits and the costs and charges;
 - the effect on *unitholders'* ability to exercise their rights;
 - if applicable, the basis on which the *authorised fund manager* has satisfied itself as to the cost impact of its decision under ■ COLL 7.8.14R;
 - a description of the main features of the *side pocket class*;
 - practical information that *unitholders* will need to understand about the changes to their investment in the *authorised fund*;
 - and
 - each of the matters specified in ■ COLL 7.8.13R(4) (Modified application of COLL 4.2 (Pre-sale notifications)).
- (4) The notification must:
 - (a) be written in clear and plain language;
 - (b) be provided in a *durable medium*; and
 - (c) be accessible by existing and prospective *unitholders* (e.g. by publishing a copy in a prominent location on the *authorised fund manager's* website).

7.8.23

G

- (1) In relation to ■ COLL 7.8.22R(3)(a), the information in the notification should include:
 - (a) a description of the *scheme's* exposure to *affected investments* and the *authorised fund manager's* approach to valuing them;
 - (b) an explanation of the risks such *affected investments* pose to the *scheme* and its *unitholders*, and the *authorised fund manager's* policies for mitigating those risks;
 - (c) a description of what measures the *authorised fund manager* is taking as a result of those risks, and in relation to which *affected investments*;
 - (d) either a detailed list of the *affected investments* or a link to a place where they are (or will be) set out, making clear (if applicable) which *affected investments* are not subject to any of the measures referred to in (c); and
 - (e) an explanation of the costs and charges to be borne by *unitholders* in the new *classes*, and of any resulting change in the costs and charges borne by existing *classes*.
- (2) In relation to ■ COLL 7.8.22R(3)(d), the information in the notification should include:
 - (a) the name of each *side pocket class* and a description of how the rights of a *unitholder* differ from the rights attached to existing *classes* and any other new *classes*;

- (b) any alteration in the rights attached to an existing *class* (e.g. that it will be valued without reference to *affected investments*);
 - (c) the terms on which new *units* are *issued* to existing *unitholders*, i.e. whether *units* in a new *class* are *issued* in addition to *units* in an existing *class*, or by way of conversion into *units* in one or more new *classes*;
 - (d) the terms on which *units* are *issued* to both existing and new *unitholders*; and
 - (e) the date on which the changes take effect.
- (3) In relation to ■ COLL 7.8.22R(3)(e), the information in the notification should include:
- (a) an explanation of the *dealing* arrangements for *redemptions*, including the *dealing days*;
 - (b) if applicable, that *dealing* in *units* in the *side pocket class* has been suspended (see also ■ COLL 7.2.1R(2A), ■ (2B) and ■ (2C) (Requirement));
 - (c) when and how *redemption* proceeds will be paid, including any alternative arrangements for payment;
 - (d) the circumstances in which *unitholders* may convert their *units* in a *side pocket class* to *units* of another *class* of the *scheme*; and
 - (e) the circumstances in which *unitholders* may transfer title to their *units* in the *class* to another *person*.

7.8.24 **R** The *authorised fund manager* must, as soon as reasonably practicable after the date on which the *side pocket class* is created, send a written statement to each *unitholder* confirming the number and type of *units* of each *class* the *unitholder* holds in the *authorised fund* as a result of the creation of the *side pocket class*.

7.8.25 **G** The notification required by ■ COLL 7.8.22R and the written statement of holdings required by ■ COLL 7.8.24R may be issued to existing *unitholders* in a single combined communication. However, it will not be possible to use a single combined communication where the notification required by ■ COLL 7.8.22R is provided to a *unitholder's* financial adviser instead of the *unitholder* (see ■ COLL 7.8.22R(2)).

Side pockets: modified application of COLL 5 (Investment and borrowing powers)

- 7.8.26** **R**
- (1) ■ COLL 5 (Investment and borrowing powers) applies to the *side pocket property*, subject to the modifications in this *rule*.
 - (2) Subject to (4) to (6), in the case of a *UCITS scheme*, the *authorised fund manager* must comply with as much of ■ COLL 5.1 (Introduction), ■ COLL 5.2 (General investment powers and limits for UCITS schemes) and ■ COLL 5.3 (Derivative exposure) as is practicable having regard to the limited purpose for which the *side pocket class* was created.
 - (3) Subject to (4) to (6), in the case of a *non-UCITS retail scheme*, the *authorised fund manager* must comply with as much of ■ COLL 5.1

(Introduction) and ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) as is practicable having regard to the limited purpose for which the *side pocket class* was created.

- (4) The *authorised fund manager* may only enter into a *derivative* or a forward transaction which:
 - (a) is a 'class hedging transaction' within the meaning of ■ COLL 3.3.5R(4)(d); and
 - (b) falls within ■ COLL 3.3.5AR (Hedging of unit classes) (see also ■ COLL 3.3.5BG (Guidance on hedging of unit classes)), and all provisions of ■ COLL 5 relevant to such transactions apply.
- (5) ■ COLL 5.5.3R (Cash and near cash) applies, except that references to the 'investment objectives' of the *scheme* should be read as references to the objective in ■ COLL 7.8.33R(2)(b) (Modified application of COLL 6.6 (Operating duties and responsibilities)).
- (6) The following rules apply:
 - (a) ■ COLL 5.5.4R (General power to borrow);
 - (b) ■ COLL 5.5.5R (Borrowing limits);
 - (c) ■ COLL 5.5.6R (Restrictions on lending of money);
 - (d) ■ COLL 5.5.7R (Restrictions on lending of property other than money);
 - (e) ■ COLL 5.5.8R (General power to accept or underwrite placings); and
 - (f) ■ COLL 5.5.9R (Guarantees and indemnities).

Side pockets: guidance on modified application of COLL 5

7.8.27

G

- (1) The nature of a *side pocket class* means that the *authorised fund manager* cannot apply the same risk controls to *affected investments* that would apply to the rest of the *scheme property*. In the FCA's view, it would not be practicable for the *authorised fund manager* to apply a prudent spread of risk to the *affected investments* or to comply in full with the specific eligibility and risk-spreading limits set out in ■ COLL 5 for *transferable securities*, money-market instruments and *units* in *collective investment schemes*.
- (2) However, the modification of the rules provided in ■ COLL 7.8.26R(2) and ■ (3) is to be interpreted narrowly and only to the extent necessary to allow the *authorised fund manager* to manage the risks of the *affected investments* allocated to the *side pocket class* and to *deal* efficiently with them. In particular, the modifications in those *rules* do not permit an *authorised fund manager* to take any action that increases the risk profile of the *scheme* as a whole, such as acquiring property or entering into transactions that would not be permitted by the unmodified *rules* of ■ COLL 5.

COLL 5 references to ‘scheme property’ in relation to other parts of the scheme

- 7.8.28** **R**
- (1) This *rule* applies to the *authorised fund manager* and *depository* of an *authorised fund* with a *side pocket class*.
 - (2) For the purpose of interpreting references to the ‘scheme property’ in ■ COLL 5 in relation to the part of the *scheme* which is not a ‘side pocket’, the *authorised fund manager* and *depository* may disregard the *side pocket property*.
 - (3) The reference to a ‘side pocket’ in (2) is a reference to a part of the *scheme* which is represented by *units* in a *side pocket class*.

**Application of COLL 6 (Operating duties and responsibilities):
General**

- 7.8.29** **R**
- The *rules* and *guidance* in ■ COLL 6 (Operating duties and responsibilities) apply in relation to an *authorised fund* with a *side pocket class* subject to the modifications specified in ■ COLL 7.8.30R (Modified application of COLL 6.2 (Dealing)) to ■ COLL 7.8.36R (Modified application of COLL 6.7 (Payments)).

Modified application of COLL 6.2 (Dealing)

- 7.8.30** **R**
- (1) ■ COLL 6.2 (Dealing) applies to a *side pocket class* subject to the modifications specified in this *rule*.
 - (2) For the purposes of ■ COLL 6.2.8R (Issue and cancellation of units through an authorised fund manager), if the *authorised fund manager* redeems a *unit* in a *side pocket class* from a *unitholder*, the *authorised fund manager* must immediately *cancel* the *unit* or, in relation to an *AUT* or *ACS*, instruct the *depository* to do so.
 - (3)
 - (a) Subject to (b) and (c), the requirement in ■ COLL 6.2.13R (Payment for units issued) may be satisfied by the *authorised fund manager* allocating such proportion of the *scheme property* to that *class* as the *authorised fund manager* may determine.
 - (b) Before making the allocation of *scheme property* in (a), the *authorised fund manager* must consult the *depository* and take its views into account.
 - (c) After being consulted under (b), the *depository* must consider the proposed allocation of the *scheme property* and inform the *authorised fund manager* if it considers that the allocation is not appropriate, having regard to the purpose of the *side pocket class*.
 - (4) In ■ COLL 6.2.16R (Sale and redemption), in relation to the *redemption* of *units* in a *side pocket class*:
 - (a) paragraphs (4) and (5) apply unless the *prospectus* makes alternative provision for how *unitholders* may be paid; and
 - (b) paragraphs (5A), (6) and (7) do not apply.
 - (5) The *authorised fund manager* must apply ■ COLL 6.2.18R (Limited issue) as follows:

- (a) ■ COLL 6.2.18R(1) applies to the *issue of units* in a *side pocket class*;
- (b) ■ COLL 6.2.18R(2) does not apply to a *side pocket class*, and the *authorised fund manager* must not provide for the further *issue of units* in the same *class*; and
- (c) ■ COLL 6.2.18R(3) applies where a *scheme* has a *side pocket class*.

Modified application of COLL 6.3 (Valuation and pricing)

7.8.31

R

- (1) ■ COLL 6.3 (Valuation and pricing) applies in relation to a *side pocket class* subject to the modifications specified in this *rule* (see also ■ COLL 7.8.32G).
- (2) For the purpose of ■ COLL 6.3.5R (Price of a unit), the *authorised fund manager* must ensure that the price of a *unit* in a *side pocket class* is calculated:
 - (a) by reference to the net value of the *side pocket property*; and
 - (b) in accordance with the provisions of both the *instrument constituting the fund* and the *prospectus*.
- (3) Notwithstanding ■ COLL 6.3.11R (Publication of prices), the *authorised fund manager* must make public in an appropriate manner the *price of a unit* in the *side pocket class* after every *valuation point* (see ■ COLL 6.3.4R (Valuation points)), even if the *authorised fund manager* is not holding itself out to *deal* in such *units* at that *valuation point*.

7.8.32

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The *guidance* in ■ COLL 6.3.12G(1)(a) to ■ (c) is unlikely to be relevant to an *authorised fund manager* when publishing the *price of a unit* in a *side pocket class* in accordance with the *rules* in this section.

Modified application of COLL 6.6 (Operating duties and responsibilities)

7.8.33

R

- (1) ■ COLL 6.6 (Operating duties and responsibilities) applies to the *authorised fund manager* and *depository* of an *authorised fund* with a *side pocket class*, subject to the modifications specified in this *rule* and ■ COLL 7.8.34R (Modified application of the assessment of value rules).
- (2) For the purposes of ■ COLL 6.6.3R(3)(a) (Functions of the authorised fund manager), the *authorised fund manager* must make decisions as to the constituents of the *scheme property*:
 - (a) in accordance with the investment objectives and policy of the *scheme*, but may disregard any *affected investment* in the *side pocket property*; and
 - (b) with a view to disposing of those *affected investments* over time as and when the *authorised fund manager* considers this can be done in the best interests of *unitholders*.
- (3) For the purposes of ■ COLL 6.6.4R(1) (General duties of the depository), the *depository* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with the matters specified in ■ COLL 6.6.4R(1)(a) to ■ (e) as modified by the *rules* in this section, and ■ COLL 6.6.4R(2) is to be read accordingly.

- (4) (a) The duty in ■ COLL 6.6.14R(2) (Duties of the depositary and the authorised fund manager: investment and borrowing powers) requiring the *authorised fund manager* to rectify at its own expense a breach of ■ COLL 5 (Investment and borrowing powers), or any provision of the *instrument constituting the fund* or the *prospectus*, does not apply to the extent that:
- (i) the breach relates to *affected investments* in the *side pocket property*; and
 - (ii) the *depositary* is satisfied that it is not practicable for the *authorised fund manager* to comply with the relevant *rule* in ■ COLL 5, the provision of the *instrument constituting the fund* or the *prospectus*.
- (b) ■ COLL 6.6.14R(4), ■ (5) and ■ (6) do not apply to the extent that the breach falls within (a) above.

Modified application of the assessment of value rules

7.8.34

R

When conducting an assessment of value for the purposes of ■ COLL 6.6.20R (Assessment of value) in relation to a *scheme* that has a *side pocket class*, the *authorised fund manager*:

- (1) must consider each of the matters included in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value) in relation to the *scheme* as a whole, including the *side pocket class*, but may adopt a proportionate approach to the assessment as it applies specifically to the *side pocket class*;
- (2) in relation to the *side pocket class*, need not consider a matter included in ■ COLL 6.6.21R if, in all the circumstances, it is not relevant to that *class*;
- (3) must consider whether, to the extent that payments are being made out of the *scheme property* attributable to the *side pocket class* or are being accrued for that purpose, those payments:
 - (a) are justified in terms of the value delivered to *unitholders* in the *side pocket class*; and
 - (b) are not prejudicial to the interests of *unitholders* of other *classes*; and
- (4) must consider whether it remains in *unitholders'* best interests for the *side pocket class* to continue in operation.

7.8.35

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- (1) In relation to ■ COLL 7.8.34R(1), the *authorised fund manager* should consider the *side pocket class* when carrying out an assessment of value for a *scheme*. A *side pocket class*, because of its special purpose, might in isolation represent poor value according to the standard criteria for assessment, so the *authorised fund manager* should take account of that purpose in order to reach a proportionate assessment. However, where payments are being taken out of the *side pocket property*, the assessment of overall value delivered to *unitholders* in the *scheme* should give due weight to the impact of those payments.
- (2) In relation to ■ COLL 7.8.34R(3)(a), the *authorised fund manager* should consider whether the payments out of *scheme property* can be

justified when compared with the value it reasonably expects that *unitholders* might receive from any eventual disposal of the *affected investments*, taking into account current market conditions and relevant political and economic developments.

- (3) In relation to ■ COLL 7.8.34R(3)(b), it is likely to be unfair or prejudicial to *unitholders'* best interests for costs and charges borne by the side pocket class to be attributable to *unitholders* in other *classes*.

Modified application of COLL 6.7 (Payments)

7.8.36

R

- (1) ■ COLL 6.7 (Payments) applies in relation to an *authorised fund* with a *side pocket class* subject to the modifications and additional requirements specified in this *rule*.
- (2) The *authorised fund manager* must not impose any of the following charges or levies on *unitholders* of the *side pocket class*:
 - (a) a preliminary charge or levy when the *units* in the *side pocket class* are *issued*;
 - (b) a charge or levy on the *redemption* or *cancellation* of *units*;
 - (c) a performance-related management fee.
- (3) The *authorised fund manager* must prevent undue costs being charged to the *scheme* and its *unitholders*.

[**Note:** In relation to (3), see also ■ COLL 6.6A.2R(5) (Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholders) and article 17 of the *AIFMD level 2 regulation* (Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market).]

Application of COLL 7.2 (Suspension and restart of dealings)

7.8.37

R

- (1) ■ COLL 7.2 (Suspension and restart of dealings) applies in relation to a *side pocket class* subject to the modifications specified in this *rule*.
- (2) The *authorised fund manager* may suspend *dealings* in *units* of a *side pocket class*, while continuing to *deal* in other *classes* of the *scheme*.
- (3) If the *authorised fund manager* suspends *dealings* in accordance with (1), it is not required to carry out any request by a *unitholder* to convert *units* in the suspended *side pocket class* into units of another *class* in which *dealing* continues.
- (4) ■ COLL 7.2.1R applies to the suspension of *dealings* in *units* of a *side pocket class* under (2).

**Matters to be considered by the authorised fund manager before
creating a side pocket class**

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

- | | | |
|-----------|---------------------------------------|---|
| 1. | Investment risk considerations | |
| | (1) | Whether there is agreement on which <i>affected investments</i> should be allocated to a <i>side pocket class</i> . |
| | (2) | The possible impact of relevant sanctions regimes. |
| | (3) | The <i>authorised fund manager's</i> estimate of the likelihood of the <i>affected investments</i> achieving a realisable value within a range of timeframes. |
| | (4) | Whether the <i>authorised fund manager</i> intends to invest in <i>affected countries</i> if the economic situation stabilises and relevant sanctions regimes allow it and, if so, how that might affect <i>unitholders</i> in the <i>side pocket class</i> . |
| | (5) | Whether the <i>authorised fund manager's</i> risk management function (see COLL 6.11 (Risk control and internal reporting)) has assessed the likely consequences for the <i>authorised fund manager</i> , the <i>authorised fund</i> and its <i>unitholders</i> if the <i>authorised fund manager</i> were to take no action to set up a <i>side pocket class</i> . |
| | (6) | That there is a risk management plan which considers different scenarios for what might happen to the <i>affected investments</i> allocated to the <i>side pocket class</i> and how such scenarios would be dealt with. |
| 2. | Costs | |
| | (1) | The <i>authorised fund manager's</i> estimated one-off costs of establishing the <i>side pocket class</i> and whether these costs will be met by the <i>authorised fund manager</i> , or paid from the <i>scheme property</i> of the <i>authorised fund</i> , or apportioned between both. |
| | (2) | The <i>authorised fund manager's</i> estimated ongoing annual costs of operating the <i>side pocket class</i> , and the provision being made to pay these costs: |
| | (a) | over various scenarios as to the duration of the <i>class</i> ; and |
| | (b) | (to the extent they differ) in relation to the scenarios considered by |

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

the risk management plan in paragraph 1(6) above.

- (3) Whether the *authorised fund manager* will take a fee for managing the *side pocket class* and, if so, what factors have been considered to determine whether it is set at a fair level and to prevent *unitholders* from being charged undue costs.
- (4) How the total costs, borne by a *unitholder* holding *units* in both the *side pocket class* and a *class* relating to unaffected *investments*, will compare to the total cost that the *unitholder* currently bears.
- (5) If the future total cost for *unitholders* is expected to be higher than the current cost, how this will be justified to *unitholders* against the uncertain benefit of a future realisation of value in the *side pocket class*.

3. Legal and operational considerations

- (1) The *authorised fund manager's* legal advice on the implications of setting up a *side pocket class*, having regard to s235(4) and, in the case of an *ICVC*, s236(3) of the *Act* (see the guidance in COLL 7.8.7G).
- (2) Whether the *authorised fund's* auditor has been consulted and its view taken into account.
- (3) Whether the *authorised fund manager* is satisfied that all operational functions for which it is responsible, including fund accounting and transfer agency functions, are able to fully support the *side pocket class*.
- (4) The *authorised fund manager's* assessment of the readiness of *firms* to implement and maintain arrangements for the *side pocket class* to operate effectively, such as those that *arrange* or *deal* in *units* in the *authorised fund*, providers of *SIPPs* and providers of *linked funds*.

4. Longer-term investor considerations

- (1) The *authorised fund manager's* policy for allowing *unitholders* to exit the *class* during its lifetime.
- (2) The *authorised fund manager's* view of the likely future options for enabling the *side pocket class* to be terminated.

5. Overall assessment

Whether the *governing body* of the *authorised fund manager* is satisfied that:

- (1) the potential benefits to *unitholders* of *units* in any *side pocket class* are proportionate to the estimated costs of establishing and running the *class*, including over the long term;

This Annex belongs to COLL 7.8.4R(3)(a) (Conditions for creating side pocket classes).

- (2) proceeding to set up the *side pocket class* will be in the best interests of the *authorised fund* and its *unitholders*; and
- (3) the *depository* has been properly consulted and its view taken into account.

