

Chapter 7

Suspension of dealings,
termination of authorised
funds and side pockets

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:

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- (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*.
- (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*]

7.2.1A

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

Where:

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

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

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

Guidance

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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.