

Chapter 7

Suspension of dealings,
termination of authorised
funds and side pockets

		<div><div></div><div>7.7 UCITS mergers</div></div>
		<div>Application</div>
7.7.1	R	<p>This section applies to an <i>ICVC</i>, an <i>authorised fund manager</i> of an <i>AUT</i>, <i>ACS</i> or <i>ICVC</i>, any other <i>director</i> of an <i>ICVC</i> and the <i>depository</i> of any such <i>scheme</i> where, in each case, the <i>AUT</i>, <i>ACS</i> or <i>ICVC</i> is a <i>UCITS scheme</i> that is a party to:</p> <div><div>(1) a <i>domestic UCITS merger</i>.</div><div>(2) [deleted]</div></div>
7.7.2	G	<div><div>(1) The effect of ■ COLL 7.7.1 R, and in particular the narrow <i>Glossary</i> definition of <i>domestic UCITS merger</i>, is that this section will not apply to a merger in the <i>United Kingdom</i> between two or more <i>UCITS schemes</i> unless one of them was the subject of a <i>UCITS marketing notification</i> before <i>IP completion day</i>.</div><div>(2) [deleted]</div></div>
		<div>References to a UCITS scheme</div>
7.7.3	R	<p>In this section references to:</p> <div><div>(1) a <i>UCITS scheme</i>, a <i>merging UCITS</i> or to a <i>receiving UCITS</i> include the <i>sub-fund</i> of any such <i>scheme</i>.</div><div>(2) [deleted]</div></div> <p>[Note: article 37 of the <i>UCITS Directive</i>]</p>
		<div>UCITS mergers</div>
7.7.4	R	<p>A <i>domestic UCITS merger</i> between two or more <i>UCITS schemes</i> is permissible provided:</p> <div><div>(1) it is effected in accordance with the requirements of:<div><div>(a) the <i>UCITS Regulations 2011</i>, which include the need for the <i>FCA</i> to have made a prior order approving the proposed merger (which may be made subject to (2)); and</div><div>(b) this chapter; and</div></div></div><div>(2) in the case of a <i>UCITS scheme</i> that is:</div></div>

- (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

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- (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

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- (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 depository) 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

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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*]

Prior transfers under Dormant Assets Act 2022

7.7.8A

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- (1) This *rule* applies where:
 - (a) a *person* who is or was at any time the *authorised fund manager* or (where relevant) the *depositary* of a *merging UCITS* transferred *eligible CIS amounts* as *dormant assets* to the *dormant asset fund operator*; and
 - (b) such *dormant assets* are or were attributable to the *merging UCITS*.
- (2) The *authorised fund manager* of the *merging UCITS* must ensure that under the terms of the proposed *UCITS* merger the records required under ■ COLL 6.6.6R(5) and ■ COLL 6.6.6R(6):
 - (a) will be properly maintained;
 - (b) will be updated, where appropriate; and
 - (c) will remain accessible,

so that the amount of any *repayment claim* can be readily calculated and verified by the appropriate *person*.

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

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- (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

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