Chapter 7

Suspension of dealings and termination of authorised funds
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 depositary of any such scheme where, in each case, the AUT, ACS or ICVC is a UCITS scheme that is a party to:

(1) a domestic UCITS merger; or

(2) a cross-border UCITS merger.

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

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

(a) established in different EEA States; or

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

References to a UCITS scheme

7.7.3 R
In this section references to:

(1) a UCITS scheme, a merging UCITS, a receiving UCITS or to an EEA UCITS scheme include the sub-fund of any such scheme;

(2) the management company of an EEA UCITS scheme are to the operator of the scheme.

Note: article 37 of the UCITS Directive

UCITS mergers

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

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

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

Meetings of unitholders

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

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

UCITS Regulations 2011

7.7.6 (1) The requirements and the process which must be followed to give effect to a proposal for a UCITS merger as specified by Chapter VI of the UCITS Directive (see articles 37 to 48) have been implemented in the United Kingdom by the provisions of Part 4 of the UCITS Regulations 2011. The main features of the regime as set out in those provisions include:

(a) the different types of merger operation that will be recognised for a UCITS merger;

(b) the need for the FCA to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the UCITS Regulations 2011, where the arrangements proposed constitute either:
   (i) a domestic UCITS merger; or
   (ii) a cross-border UCITS merger in which the merging UCITS is a UCITS scheme (a UK UCITS);

(c) the information that has to be given to the FCA in order to obtain the approval under (b);

(d) the need for draft terms of merger to be prepared;

(e) the role of the relevant depositaries and auditors;

(f) the need for appropriate and accurate information to be prepared for the benefit of unitholders;
(g) rights of redemption and suspension of dealing in units in the relevant UCITS; and

(h) the consequences of the proposed merger.

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

(3) [deleted]

Common draft terms of merger

7.7.7  

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

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

(a) an identification of the type of UCITS merger and of the UCITS involved;

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

(c) the expected impact of the proposed UCITS merger on the unitholders of both the merging UCITS and the receiving UCITS;

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the UCITS on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the UCITS Regulations 2011;

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the UCITS merger;

(g) the rules applicable respectively to the transfer of assets and the exchange of units; and

(h) in the case of a UCITS merger where the receiving UCITS or the sub-fund is being specially formed for the purpose, the instrument constituting the fund of the newly constituted receiving UCITS.

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

7.7.8  

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

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

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

[Note: article 41 of the UCITS Directive]

Information to be given to unitholders

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

(a) make an informed judgment about the impact of the proposal on their investment;
(b) exercise their rights under regulation 12 (Right of redemption) of the UCITS Regulations 2011; and
(c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with [COLL 7.7.4 R (2)(a)] (UCITS mergers).

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

(a) to the unitholders of the merging UCITS and (in the case of a domestic UCITS merger) the receiving UCITS only after the FCA has given its approval to the UCITS merger proposal under regulation 9 of the UCITS Regulations 2011; and
(b) where the receiving UCITS (in the case of a cross-border UCITS merger) is an EEA UCITS scheme, to the unitholders of that scheme only after the Home State regulator of each merging UCITS has authorised the UCITS merger proposal under national measures implementing article 39 of the UCITS Directive;

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

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

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

(i) the right to obtain additional information;

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

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

(iv) the last date for exercising that right;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The information to be provided in accordance with COLL 7.7.10 R (3)(d) must include:
(a) where required by ■ 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) Where the receiving UCITS is a UCITS scheme, the information that its authorised fund manager 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 G

(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

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

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

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

New unitholders

7.7.18 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

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

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

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

(3) For a UCITS scheme which is the receiving UCITS in a domestic UCITS merger or a cross-border UCITS merger:
   (a) the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and
   (b) the FCA will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the Act in accordance with regulation 14 of the UCITS Regulations 2011.

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

[Note: article 47 of the UCITS Directive]

Confirmation obligation on completion of a UCITS merger

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

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

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