

## 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 *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

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(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

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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** **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 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 UCITS* 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

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[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.