

## Chapter 8

# Qualified investor schemes

## 8.1 Introduction

### Application

8.1.1

**R**

- (1) This chapter applies to:
  - (a) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
  - (b) any other *director* of an *ICVC*;
  - (c) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
  - (d) an *ICVC*,
 which is a *qualified investor scheme*.
- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *qualified investor schemes*.

### Purpose

8.1.2

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- (1) This chapter assists in achieving the *statutory objective* of protecting *consumers* by providing an appropriate degree of protection in respect of *authorised funds* that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in *retail schemes*.
- (2) This section ceases to apply where a *qualified investor scheme* has converted to be authorised as a *UCITS scheme* or a *non-UCITS retail scheme*.

### Qualified investor schemes: eligible investors

8.1.3

**R**

- (1) Subject to (3), the *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* to whom such *units* may be promoted under ■ COBS 4.12B.7R.
- (2) The *authorised fund manager* will be regarded as complying with (1) and (3) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.
- (3) In addition to (1), the *authorised contractual scheme manager* of a *qualified investor scheme* which is an *ACS* must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that meets the criteria set out in ■ COLL 8 Annex 2 R (ACS Qualified Investor Schemes: eligible investors).

**Qualified investor schemes - explanation**

8.1.4

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- (1) *Qualified investor schemes* are authorised funds which are intended only for *professional clients* and for *retail clients* who are sophisticated investors. For this reason, *qualified investor schemes* are subject to a restriction on promotion under ■ COBS 4.12B.6R. See also ■ COBS 4.12B.47G.
- (1A) The *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to a *person* to whom such *units* may be promoted under ■ COBS 4.12B.7R and who also meets the criteria in ■ COLL 8 Annex 2.
- (2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for *retail schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

**Application and notification procedures**

8.1.5

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Details of the application procedures in respect of *qualified investor schemes* are contained in ■ COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the FCA.

## 8.2 Constitution

### Application

- 8.2.1 **R** This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

### Classes of unit

- 8.2.2 **R** A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

### Names of schemes, sub-funds, and classes of units

- 8.2.3 **R**
- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
  - (2) Paragraph (3) applies to an *authorised fund manager* of a *qualified investor scheme*, an *ICVC* which is such a *scheme*, and any other *directors* of such an *ICVC*.
  - (3) The *scheme* or *sub-fund*:
    - (a) must not use 'Long-Term Asset Fund' or 'LTAF' in its name; and
    - (b) must not otherwise suggest through its name that it is a *fund* which invests in long-term assets or describe itself as such.

### Undesirable and misleading names

- 8.2.4 **G**
- (1) ■ COLL 6.9.6G (Undesirable and misleading names) contains *guidance* as to names which may be undesirable or misleading.
  - (2) The term 'Long-Term Asset Fund' or 'LTAF' is reserved for *long-term asset funds* (see ■ COLL 15).
  - (3) Only *AIFs* that are authorised in accordance with the *LTIF Regulation* may use the designation 'LTIF' or 'long-term investment fund'.

### Instrument constituting the fund

- 8.2.5 **R** The statements and provisions required by ■ COLL 8.2.6 R must be included in the *instrument constituting the fund* of a *qualified investor scheme*.

**Table: contents of the instrument constituting the fund**

8.2.6

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This table belongs to ■ COLL 8.2.5 R

<b>1</b>	<p><b>Description of the authorised fund</b></p> <p>Information detailing:</p> <ol style="list-style-type: none"> <li>(1) the name of the <i>authorised fund</i>;</li> <li>(2) that the <i>authorised fund</i> is a <i>qualified investor scheme</i>; and</li> <li>(3) in the case of an <i>ICVC</i>, whether the head office of the <i>company</i> is situated in England and Wales or Wales or Scotland or Northern Ireland.</li> </ol> <p><b>Property Authorised Investment Funds</b></p> <p><b>1A</b> For a <i>property authorised investment fund</i>, a statement that:</p> <ol style="list-style-type: none"> <li>(1) it is a <i>property authorised investment fund</i>;</li> <li>(2) no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</li> <li>(3) in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> in accordance with 6A if the <i>authorised fund manager</i> reasonably considers such action to be: <ol style="list-style-type: none"> <li>(a) necessary in order to enable an orderly reduction of the holding to below 10%; and</li> <li>(b) in the interests of the <i>unitholders</i> as a whole.</li> </ol> </li> </ol>
<b>2</b>	<p><b>Constitution</b></p> <p>The following statements:</p> <ol style="list-style-type: none"> <li>(1) the <i>scheme property</i> of the <i>scheme</i> is entrusted to a <i>depository</i> for safekeeping (subject to any exception permitted by the <i>rules</i>);</li> <li>(2) if relevant, the duration of the <i>scheme</i> is limited and, if so, for how long;</li> <li>(3) charges and expenses of the <i>scheme</i> may be taken out of <i>scheme property</i>;</li> <li>(4) for an <i>ICVC</i>: <ol style="list-style-type: none"> <li>(a) what the maximum and minimum sizes of the <i>scheme's</i> capital are; and</li> <li>(b) the <i>unitholders</i> are not liable for the debts of the <i>company</i>;</li> </ol> </li> <li>(4A) for an <i>ICVC</i> which is an <i>umbrella</i>, a statement that the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose;</li> <li>(4B) for a <i>co-ownership scheme</i> which is an <i>umbrella</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>;</li> </ol>

- (4C) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;
- (5) for an *AUT*:
  - (a) the *trust deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
    - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
  - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
    - (i) the *scheme* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
    - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);
  - (c) a *Unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and
  - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (6) for an *ACS*:
  - (a) the *contractual scheme deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions;
    - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
    - (iv) states that *units* may not be *issued* to a *person* other than a *person*:
      - (A) who is a:
        - (i) *professional ACS investor*;
        - (ii) *large ACS investor*; or

- (iii) *person* who already holds *units* in the *scheme*; and
  - (B) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R;
- (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
- (vi) states that for a *co-ownership scheme*:
  - (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
  - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
  - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*;
- (vii) states:
  - (A) whether the transfer of *units* in the *ACS* scheme or, for a *co-ownership scheme* which is an *umbrella (sub-funds* of which pursue differing policies in relation to transfer of *units*), in each particular *sub-fund*, is either:
    - (i) prohibited; or
    - (ii) allowed;
  - (B) where transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
    - (i) who is a:
      - (1) *professional ACS investor*; or
      - (2) *large ACS investor*; or
      - (3) *person* who already holds *units* in the *scheme*; and

- (ii) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R; and
  - (viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;
- (b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the Act (Contractual scheme rules) and for the time being in force:
  - (i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
  - (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 8.5.15 R(Income); and
- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by FCA rules does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
  - (i) acquire, manage and dispose of the *scheme property*; and
  - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

**3 Investment objectives**

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.



<b>4</b>	<p><b>Units in the scheme</b></p> <p>A statement of:</p> <ol style="list-style-type: none"> <li>(1) the <i>classes of units</i> which the <i>scheme</i> may issue, indicating, for a <i>scheme</i> which is an <i>umbrella</i>, which <i>class</i> or <i>classes</i> may be issued in respect of each <i>sub-fund</i>; and</li> <li>(2) the rights attaching to <i>units</i> of each <i>class</i> (including any provisions for the expression in two denominations of such rights).</li> </ol>
<b>5</b>	<p><b>Limitation on issue of and redemption of units</b></p> <p>Details as to:</p> <ol style="list-style-type: none"> <li>(1) the provisions relating to any restrictions on the right to redeem <i>units</i> in any <i>class</i>; and</li> <li>(2) the circumstances in which the issue of the <i>units</i> of any particular <i>class</i> may be limited.</li> </ol>
<b>6</b>	<p><b>Income and distribution</b></p> <p>Details of the <i>person</i> responsible for the calculation, transfer, allocation and distribution of income for any <i>class</i> of <i>unit</i> in <i>issue</i> during the accounting period.</p> <p><b>Redemption or cancellation of units on breach of law or rules</b></p>
<b>6A</b>	<p>A statement that where any holding of <i>units</i> by a <i>unitholder</i> is (or is reasonably considered by the <i>authorised fund manager</i> to be) an infringement of any law, governmental regulation or rule, those <i>units</i> must be redeemed or cancelled.</p>
<b>7</b>	<p><b>Base currency</b></p> <p>A statement of the <i>base currency</i> of the <i>scheme</i>.</p>
<b>8</b>	<p><b>Meetings</b></p> <p>Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for <i>unitholders</i>.</p>
<b>9</b>	<p><b>Powers and duties of the authorised fund manager and depositary</b></p> <p>Where relevant, details of any function to be undertaken by the <i>authorised fund manager</i> and <i>depositary</i> which the <i>rules</i> in <i>COLL</i> require to be stated in the <i>instrument constituting the fund</i>.</p>
<b>10</b>	<p><b>Termination and suspension</b></p> <p>Details of:</p> <ol style="list-style-type: none"> <li>(1) the grounds under which the <i>authorised fund manager</i> may initiate a suspension of the <i>scheme</i> and any associated procedures; and</li> <li>(2) the methodology for determining the rights of <i>unitholders</i> to participate in the <i>scheme property</i> on winding up.</li> </ol>
<b>10A</b>	<p><b>Investment in overseas property through an intermediate holding vehicle</b></p> <p>If investment in an overseas immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i>, a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of overseas immovables by the <i>scheme</i>.</p>
<b>11</b>	<p><b>Other relevant matters</b></p> <p>Details of those matters which enable the <i>scheme</i>, <i>authorised fund manager</i> or <i>depositary</i> to obtain any privilege or power conferred</p>

by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

**Limited issue**

8.2.7

**R**

*Units whose issue may be limited can only be issued if permitted by the instrument constituting the fund, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.*



## 8.3 Investor relations

### Application

- 8.3.1 **R** This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* of a *qualified investor scheme*.

### Drawing up and availability of a prospectus

- 8.3.2 **R**
- (1) An *authorised fund manager* must ensure that a *prospectus* of a *qualified investor scheme* is drawn up which contains the information, specified in ■ COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the *authorised fund manager* must:
    - (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
    - (b) include the date of any revision in a prominent manner in the revised *prospectus*;
    - (c) send a copy of the original and any revised *prospectus* to the *FSA*; and
    - (d) review the *prospectus* periodically and revise it to take account of any significant change or new matter.
  - (1A) A *full-scope UK AIFM* that is the *authorised fund manager* of a *qualified investor scheme* must also ensure that the *prospectus* contains the information for investors required by:
    - (i) ■ FUND 3.2.2R and ■ FUND 3.2.3R (Prior disclosure of information to investors); and
    - (ii) ■ FUND 3.2.5R and ■ FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the *scheme's* most recent annual report or half-yearly report.
  - (2) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
  - (3) An *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *qualified investor scheme* prior to the purchase of any *units*.
- 8.3.2A **G**
- (1) The *PRIPs Regulation* requires the manufacturer of a *PRIP* to draw up a *key information document* in accordance with the *PRIPs*

Regulation before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*).

- (2) The requirements of the *PRIIPs Regulation* form part of *UK* law.
- (3) As a result, when a *qualified investor scheme* is made available to *retail clients* the *authorised fund manager* will need to prepare a *key information document* in accordance with the *PRIIPs Regulation*, in addition to the *prospectus*.

**False or misleading prospectus**

8.3.3

**R**

The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

**Table: contents of qualified investor scheme prospectus**

8.3.4

**R**

This table belongs to ■ COLL 8.3.2 R.

<b>1</b>	<p><b>Document status</b></p> <p>A statement that this document is the <i>prospectus</i> of the <i>authorised fund</i> valid as at a particular date which shall be the date of the <i>document</i>.</p>
<b>2</b>	<p><b>Description of the authorised fund</b></p> <p>Information detailing:</p> <ul style="list-style-type: none"> <li>(1) the name of the <i>authorised fund</i>;</li> <li>(1A) its <i>FCA</i> product reference number (PRN);</li> <li>(2) that the <i>authorised fund</i> is either an <i>ICVC</i>, <i>ACS</i> or an <i>AUT</i>;</li> <li>(3) that the <i>scheme</i> is a <i>qualified investor scheme</i>;</li> <li>(4) where relevant, that the <i>unitholders</i> in an <i>ICVC</i> are not liable for the debts of the <i>authorised fund</i>;</li> <li>(5) where relevant, the address of the <i>ICVC</i>'s head office and the address in the <i>United Kingdom</i> for service on the <i>ICVC</i> of documents required or authorised to be served on it;</li> <li>(6) the effective date of the <i>authorisation order</i> made by the <i>FCA</i> and, if the duration of the <i>authorised fund</i> is not unlimited, when it will or may terminate;</li> <li>(7) the <i>base currency</i> for the <i>authorised fund</i>;</li> <li>(8) where relevant, the maximum and minimum sizes of the <i>ICVC</i>'s capital;</li> <li>(9) the circumstances in which the <i>authorised fund</i> may be wound up under the <i>rules</i> in <i>COLL</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up; and</li> <li>(10) for an <i>ACS</i> that is a <i>limited partnership scheme</i>, the address of the proposed principal place of business of the <i>limited partnership scheme</i>.</li> </ul>
<b>3</b>	<p><b>Investment objectives and policy</b></p> <ul style="list-style-type: none"> <li>(1) Sufficient information to enable a <i>unitholder</i> to ascertain:</li> </ul>

- (a) the investment objectives of the *authorised fund*;
  - (b) the *authorised fund's* investment policy for achieving those investment objectives, including:
    - (i) the general nature of the portfolio and any intended specialisation;
    - (ii) the policy for the spreading of risk in the *scheme property*; and
    - (iii) the policy in relation to the exercise of borrowing powers;
  - (c) a description of any restrictions in the assets in which investment may be made; and
  - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) For investment in immovables :
- (a) the countries or territories of immovables in which the *authorised fund* may invest;
  - (b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
  - (c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.
- (3) If intended, whether the *scheme property* may consist of *units in collective investment schemes* ("second schemes") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as:
- (a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and
  - (b) the extent to which any such charges will be reimbursed to the *scheme*.
- (4) If intended, whether the *scheme* may enter into *stock lending* transactions and, if so, what procedures will operate and what *collateral* will be required.
- (5) Where a *scheme* is a *feeder scheme* which (in respect of investment in *units* in a single *collective investment scheme*) is *dedicated* to *units* in a *collective investment scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the feeder *scheme* may make in it;
- 4 Distributions and accounting dates**
- Relevant details of accounting and distribution dates and a description of the procedures:
- (1) for determining and applying income (including how any distributable income is paid); and
  - (2) relating to unclaimed distributions.
- 5 The characteristics of units in the authorised fund**
- Information as to:

- (1) the names of the *classes of units* in issue or available for *issue* and the rights attached to them in so far as they vary from the rights attached to other *classes*;
- (2) how *unitholders* may exercise their voting rights and what these are; and
- (3) the circumstances where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required.

**5A Issue of units in ACSs: eligible investors**

- (1) A statement that *units* may not be *issued* to a *person* other than to a *person* :
  - (a) who is a:
    - (i) *professional ACS investor*; or
    - (ii) *large ACS investor*; or
    - (iii) *person* who already holds *units* in the *scheme*; and
  - (b) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R.
- (2) A statement that the *authorised contractual scheme manager* of an ACS must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

**5B Transfer of units in ACSs**

- (1) A statement whether the transfer of *units* in the ACS *scheme* is either:
  - (a) prohibited; or
  - (b) allowed;
 by the *instrument constituting the fund* and prospectus.
- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund* and prospectus in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
  - (a) who is a:
    - (i) *professional ACS investor*; or
    - (ii) *large ACS investor*; or
    - (iii) *person* who already holds *units* in the *scheme*; and
  - (b) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12B.7R.
- (3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds*

	have differing policies in relation to transfer of <i>units</i> , separate statements are required.
<b>6</b>	<p><b>The authorised fund manager</b></p> <p>The following particulars of the <i>authorised fund manager</i>:</p> <ol style="list-style-type: none"> <li>(1) its name and the nature of its corporate form;</li> <li>(2) the country or territory of its incorporation;</li> <li>(3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;</li> <li>(4) if it is a <i>subsidiary</i>, the name of its ultimate <i>holding company</i> and the country or territory in which that <i>holding company</i> is incorporated;</li> <li>(5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the <i>United Kingdom</i>;</li> <li>(6) the amount of its issued share capital and how much of it is paid up;</li> <li>(7) for an <i>ICVC</i>, a summary of the material provisions of the contract between the <i>ICVC</i> and the <i>authorised fund manager</i> which may be relevant to <i>unitholders</i> including provisions (if any) relating to termination, compensation on termination and indemnity; and</li> <li>(8) for an <i>AUT</i>, the names of the <i>directors</i> of the <i>authorised fund manager</i>.</li> </ol>
<b>7</b>	<p><b>Directors of an ICVC, other than the ACD</b></p> <p>Other than for the <i>ACD</i>:</p> <ol style="list-style-type: none"> <li>(1) the names and positions in the <i>ICVC</i> of the <i>directors</i>; and</li> <li>(2) the manner, amount and calculation of the <i>remuneration</i> of the <i>directors</i>.</li> </ol>
<b>8</b>	<p><b>The depositary</b></p> <p>The following particulars of the <i>depositary</i>:</p> <ol style="list-style-type: none"> <li>(1) its name and the nature of its corporate form;</li> <li>(2) the country or territory of its incorporation;</li> <li>(3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and</li> <li>(4) if neither its registered office nor its head office is in the <i>United Kingdom</i>, the address of its principal place of business in the <i>United Kingdom</i>.</li> </ol>
<b>9</b>	<p><b>The investment adviser</b></p> <p>If an <i>investment adviser</i> is retained in connection with the business of the <i>authorised fund</i>, its name and whether or not it is authorised by the <i>FCA</i>.</p>
<b>10</b>	<p><b>The auditor</b></p> <p>The name of the auditor of the <i>authorised fund</i>.</p>
<b>11</b>	<p><b>The register of Unitholders</b></p> <p>Details of the address in the <i>United Kingdom</i> where the <i>register of unitholders</i> is kept and can be inspected by <i>unitholders</i>.</p>
<b>12</b>	<p><b>Payments out of the scheme property</b></p> <p>The payments that may be made out of the <i>scheme property</i> to</p>

any *person* whether by way of *remuneration* for services, or reimbursement of expense and for each category of *remuneration* or expense, the following should be specified:

- (1) the current rates or amounts of such *remuneration*;
- (2) how the *remuneration* will be calculated and accrue and when it will be paid;
- (3) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
  - (a) introduce a new category of *remuneration* for its services; or
  - (b) increase the basis of any current charge; or
  - (c) change the basis of the treatment of a payment from the *capital property* set out in COLL 8.5.13 R (2) (Payments);

particulars of that introduction or increase and when it will take place;

- (4) the types of any other charges and expenses that may be taken out of the *scheme property*; and
- (5) if, in accordance with COLL 8.5.13 R (2), all or part of the *remuneration* or expense are to be treated as a capital charge:
  - (a) that fact; and
  - (b) the basis of the charge which may be so treated.

**13 Dealing**

Details of:

- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale and redemption of units*;
- (2) the procedures for effecting:
  - (a) the *issue and cancellation of units*;
  - (b) the *sale and redemption of units*; and
  - (c) the settlement of transactions;
- (3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in COLL 8.5.11 R (3) (Sale and redemption) may be applied;
- (4) the circumstances in which the *redemption of units* may be suspended;
- (5) the *days* and times in the *day* on which recalculation of the *price* will commence;
- (6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
  - (a) any one *person* may hold; and
  - (b) may be the subject of any one transaction of *sale or redemption*;
- (7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption of units* in specie;



- (8) the circumstances in which the further *issue* of *units* in any particular *class* may be limited and the procedures relating to this;
- (9) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *depository* of an *AUT* or *ACS* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*;
- (10) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer; and
- (11) if the *authorised fund manager* deals as principal in *units* of the *scheme* and holds them for that purpose, a statement of its policy for doing so and, where applicable:
  - (a) a description of when the *authorised fund manager* may retain any profits it earns and absorb any losses it incurs for these activities; and
  - (b) a statement of non-accountability as referred to in COLL 8.5.14G.

**14 Valuation of scheme property**

Details as to:

- (1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a description of any circumstance where the *scheme property* may be specially valued;
- (2) in relation to each purpose for which the *scheme property* must be valued, the basis on which it will be valued; and
- (3) how the *price* of *units* of each *class* will be determined, including a statement that a *forward price* basis is to be applied.

**15 Sale and redemption charges**

If the *authorised fund manager* makes any charges on *sale* or *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

**15A Property Authorised Investment Funds**

For a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:
  - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
  - (b) in the interests of the *unitholders* as a whole.

**16 General information**

Details as to:

- (1) when annual and half- yearly reports will be published; and
- (2) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

**17 Information on the umbrella**

In the case of a *scheme* which is an *umbrella*, the following information:

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption* and *sale*;
- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*;
- (5) for an *ICVC* or a *co-ownership scheme*, that:
  - (a) for an *ICVC*, its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
  - (aa) for a *co-ownership scheme*, the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the participants in that *sub-fund*; and
  - (b) for an *ICVC* or a *co-ownership scheme*, while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*; and
- (6) the *FCA* product reference number (PRN) of each *sub-fund*.

**18 Application of the prospectus contents to an umbrella**

For a *scheme* which is an *umbrella*, information required must be stated:

- (1) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (2) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

**18A Investment in overseas property through an intermediate holding vehicle**

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles* a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* is to enable the holding of overseas immovables by the *scheme*.

**18B Information on authorised contractual schemes**

A statement that:

- (1) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (2) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (3) the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business; and
- (4) the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*).

**18C Sustainability information**

The following information, as applicable:

- (1) where a *sustainability label* is used in relation to a *scheme*, the information set out at ESG 5.3.3R and ESG 5.3.6R, in accordance with ESG 5.3.2R(1); or
- (2) where a *sustainability label* is not used in relation to a *scheme*, but that *scheme* uses the terms in ESG 4.3.2R(2) under ESG 4.3.2R(1) the information required under ESG 5.3.2R(2).

**19 Additional information**

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund manager* would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating.

**Pre-sale information to be made available on securities financing transactions and total return swaps**

8.3.4A

G

The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* must make available to investors before they invest.

■ COLL 4.2.5BEU and ■ COLL 4.2.5CEU copy out the relevant provisions of that regulation.

An *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* should publish the information in the *scheme prospectus*.

An *authorised fund manager* of a *qualified investor scheme* that does not use *securities financing transactions* or *total return swaps* is not required to include the information in ■ COLL 4.2.5CEU in the *prospectus* or other pre-sale documents.

[Note: A transitional provision applies to ■ COLL 8.3.4AG: see ■ COLL TP 1.39G]

**Report and accounts**

8.3.5

R

- (1) The *authorised fund manager* must prepare a report in respect of each *annual accounting period* and *half-yearly accounting period*.
- (2) [deleted]
- (2A) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.
- (3A) The timing of the publication of the annual report in (3) is subject to ■ FUND 3.3.3R if the *authorised fund manager* is a *full-scope UK AIFM*.
- (4) [deleted]
- (5) The *authorised fund manager* must provide free of charge on the request of any *person* eligible to invest in the *scheme* a copy of the latest annual or half-yearly report before the conclusion of any sale to such *person*.
- (6) The *authorised fund manager* must provide a copy of each annual and half-yearly report to the *FCA*.
- (7) For a *scheme* which is an *umbrella*, any annual report provided under (3) or (5) may be a report prepared under ■ COLL 8.3.5AR (3), but the *authorised fund manager* must nevertheless provide free of charge the report prepared under ■ COLL 8.3.5AR (2) if a *unitholder* or any other *person* eligible to invest in the *scheme* requests it.

**Contents of the annual report**

8.3.5A

**R**

- (1) An annual report, other than for a *scheme* which is an *umbrella*, must contain:
  - (a) the accounts for the *annual accounting period* prepared in accordance with the requirements of the *IMA SORP*;
  - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R (Authorised fund manager's report);
  - (bA) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A) (Comparative information);
  - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R (Report of the depository);
  - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor);
  - (e) subject to ■ COLL 8.3.5AR(1)(d), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R; and
  - (f) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R.
  
- (2) An annual report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
  - (a) for each *sub-fund*:
    - (i) the accounts required by (1)(a);
    - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
    - (iii) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A);
    - (iv) subject to ■ COLL 8.3.5AR(2)(v), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R; and
    - (v) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R.
  - (b) [deleted]
  - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
  - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
  
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual report for any one or more individual *sub-funds* of the *umbrella*, in which case it must contain:
  - (a) for the *sub-fund*:

- (i) the accounts required by (1)(a);
  - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R; and
  - (iii) comparative information in accordance with ■ COLL 4.5.10R (1A) and ■ (2A);
- (b) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
- (c) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (4) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* or *sub-fund* for the relevant *annual accounting period*, and of the financial position of the *authorised fund* or *sub-fund* as at the end of that period.
- (5) An annual report of an *authorised fund* must also contain a statement setting out a description of the assessment of value required by ■ COLL 8.5.17R including:
- (a) a separate discussion and conclusion for the matters covered in each paragraph of ■ COLL 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;
  - (b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;
  - (c) an explanation for any case in which *unitholders* hold *units* in a *class* for which the payments out of *scheme property* in relation to that *class* as set out in the *prospectus* (in this rule, "charges") are higher than those applying to other *classes* of the same *scheme* with substantially similar rights;
  - (d) the conclusion of the *authorised fund manager's* assessment of whether the charges are justified in the context of the overall value delivered to the *unitholders* in the *scheme*; and
  - (e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the *unitholders*, a clear explanation of what action has been or will be taken to address the situation.
- (6) An *AFM* need not include the information required by (5) in its annual report if it makes the information available to *unitholders* annually in a composite report covering two or more of the *schemes* it manages, published in the same manner as the annual report.

**Information to be included in annual reports on securities financing transactions and total return swaps**

8.3.5AA

G

- (1) The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a

*full-scope UK AIFM of a qualified investor scheme must include in the scheme's annual report.*

- (2) ■ COLL 4.5.8ABEU and ■ COLL 4.5.8ACEU copy out the relevant provisions of that regulation.
- (3) An *authorised fund manager of a qualified investor scheme* that has not used *securities financing transactions* or *total return swaps* during the relevant *annual accounting period* is not required to include the information in ■ COLL 4.5.8ACEU in its reports.

### Contents of the half-yearly report

8.3.5B

R

- (1) A half-yearly report on an *authorised fund* or *sub-fund* must contain:
  - (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
  - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
  - (c) subject to ■ COLL 8.3.5BR(1)(d), its *public TCFD product report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 2.3.1R, where the half-yearly report most closely follows the reporting deadline of 30 June, under ■ ESG 2.1.1R(1); and
  - (d) where applicable, Part B of its *public product-level sustainability report* or an adequately contextualised and prominent cross-reference and hyperlink to the report's location on the *firm's* website, in accordance with ■ ESG 5.5.5R, where the half-yearly report is the report that most closely follows the date on which Part B of the *public product-level sustainability report* was published.
- (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* may choose whether the half-yearly report is prepared for the *umbrella* as a whole, or for each individual *sub-fund*, or both.

### Authorised fund manager's report

8.3.5C

R

The report of the *authorised fund manager* must include:

- (1) a review of the investment activities during the period to which the report relates;
- (1A) a portfolio statement prepared in accordance with the requirements of the *IMA SORP*;
- (1B) in the case of an *umbrella* which has more than one *sub-fund*, particulars in the form of a table showing, as at the end of the period to which the report relates:
  - (a) for each *sub-fund*, the number of *units* in that *sub-fund* that were held by a second *sub-fund* of that *umbrella*; and
  - (b) the value of each such holding;

or, alternatively, a statement that there were no such holdings as at the end of that period;

- (2) particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report; and
- (3) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

### Report of the depositary

8.3.5D

R

- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The *depositary's* report must contain:
  - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
  - (b) a statement whether in any material respect:
    - (i) the *issue, sale, redemption and cancellation* and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the fund*; and
    - (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

### Signing of annual and half-yearly reports

8.3.5E

R

The annual reports in ■ COLL 8.3.5AR (1) and ■ (2) and the half-yearly reports in ■ COLL 8.3.5BR (1) must:

- (1) in the case of an *ICVC*, if there is:
  - (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
  - (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT* or *ACS*, if the *authorised fund manager* has:
  - (a) more than one director, be signed by at least two directors of the *authorised fund manager*; or
  - (b) only one director, be signed by the director of the *authorised fund manager*.

### Alterations to the scheme and notices to Unitholders

8.3.6

R

- (1) Any proposed change which would be reasonably considered to be a fundamental change to the *scheme* requires the prior sanction of an ordinary resolution of the *unitholders*.



- (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *Unitholders* to become effective.
- (3) Alterations affecting only a particular *sub-fund* or *class of units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class of units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
- (4) This *rule* and ■ COLL 8.3.8 R (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class of units* rather than the *scheme* or *sub-fund* as a whole.

**Alterations to the scheme and notices to Unitholders: guidance**

8.3.7 G Although account should be taken of the *guidance* on fundamental changes (■ COLL 4.3.5 G (Guidance on fundamental changes)) and significant changes (■ COLL 4.3.7 G (Guidance on significant changes)) the impact of any change to the *scheme* should be assessed individually based on the nature of the *scheme* and its investor profile.

**Meetings**

8.3.8 R

- (1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the *instrument constituting the fund* and be reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all proceedings to which ■ COLL 8.3.6 R (Alterations to the scheme and notices to Unitholders) and this *rule* are relevant.
- (3) The provisions in ■ COLL 4.4.12 R (Notices to Unitholders), ■ COLL 4.4.13 R (Other notices) and ■ COLL 4.4.14 G (References to writing and electronic documents) apply in relation to *qualified investor schemes*.

## 8.4 Investment and borrowing powers

### Application

- 8.4.1 **R** (1) Subject to (1A), this section applies to an *ICVC* which is a *qualified investor scheme* and an *authorised fund manager* and a *depository* of a *qualified investor scheme*.
- (1A) Other than **■** COLL 8.4.2R, **■** COLL 8.4.4CG, **■** COLL 8.4.7R, **■** COLL 8.4.8R and **■** COLL 8.4.9AG this section does not apply where the *qualified investor scheme* in question is a *regulated money market fund*.

- 8.4.1A **R** (1) Where this section refers to a second *scheme*, and the second *scheme* is a *feeder scheme*, which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the *feeder scheme's* master *scheme* invests.
- (2) Where this section refers to a second *scheme*, and the second *scheme* is a master *scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *qualified investor scheme* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

### Spread of risk

- 8.4.2 **R** An *authorised fund manager* must take reasonable steps to ensure that the *scheme property* of a *qualified investor scheme* provides a spread of risk, taking into account the investment objectives and policy of the *scheme* as stated in the most recently published *prospectus*, and in particular, any investment objective as regards return to the *unitholders* (whether through capital appreciation or income or both).

### Investment powers: general

- 8.4.3 **R** (1) The *scheme property* of a *qualified investor scheme* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the fund* and the *prospectus* may further restrict:
- (a) the kinds of assets in which the *scheme property* may be invested;

- (b) the types of transactions permitted and any relevant limits; and
- (c) the borrowing powers of the *scheme*.

**Qualified investor schemes: general**

8.4.4

**R**

The *scheme property* of a *qualified investor scheme* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:

- (1) any *specified investment*:
  - (a) within articles 74 to 86 of the *Regulated Activities Order*; and
  - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a *specified investment* within (a);
- (2) an interest in an immovable under ■ COLL 8.4.11 R (Investment in property);
- (3) *precious metals*; or
- (4) a *commodity contract* traded on an *RIE* or a *recognised overseas investment exchange*.

**Money market funds**

8.4.4A

**R**

[deleted]

8.4.4B

**R**

[deleted]

8.4.4C

**G**

Investment powers and limits for *qualified investor schemes* that are *regulated money market funds* are set out in the *Money Market Funds Regulation*. Subject to complying with that Regulation, the *instrument constituting the fund* may further restrict:

- (1) the kinds of assets in which the *scheme property* may be invested;
- (2) the types of transactions permitted and any relevant limits; and
- (3) the borrowing powers of the *scheme*.

**Investment in collective investment schemes**

8.4.5

**R**

- (1) A *qualified investor scheme* may invest in *units* in a *scheme* (a '*second scheme*') only if the *second scheme* is:
  - (a) a *regulated collective investment scheme*; or
  - (b) a *scheme* not within (a) where the *authorised fund manager* has taken reasonable care to determine that:
    - (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;

- (ii) the calculation of the net asset value of each of the second *schemes* and the maintenance of their accounting records is segregated from the investment management function;
- (iii) (unless it is a master *scheme* to whose *units* the relevant *qualified investor scheme* is dedicated) it is prohibited from investing more than 15% of its value in *units* of *schemes* or, if there is no such prohibition, the *qualified investor scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made; and
- (iv) it operates in accordance with the principle of risk spreading as described in ■ COLL 8.4.2 R.

(2) A *qualified investor scheme* must not invest more than 20% in value of the *scheme property* in *units* in second *schemes* which are unregulated *schemes* or *qualified investor schemes* unless the *authorised fund manager* has carried out appropriate due diligence on each of the second *schemes* and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second *scheme* complies with relevant legal and regulatory requirements.

(3) The *authorised fund manager* of a *qualified investor scheme* with more than 20% in value of the *scheme property* invested in one or more second *schemes* which are unregulated *schemes* or *qualified investor schemes* must carry out appropriate due diligence on those *schemes* on an ongoing basis.

**Investment in a collective investment scheme that is an umbrella**

8.4.5A

**R**

Where the second *scheme* in ■ COLL 8.4.5 R is an *umbrella*, the provisions apply to each *sub-fund* as if it were a separate *scheme*.

8.4.5B

**G**

- (1) The *guidance* at ■ COLL 5.7.11 G applies to an *authorised fund manager* of a *qualified investor scheme* carrying out due diligence for the purpose of ■ COLL 8.4.5 R, as if that *guidance* related to ■ COLL 8.4.5 R.
- (2) Where ■ COLL 5.7.11G (10) refers to ■ COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to ■ COLL 8.5.9 R (Valuation, pricing and dealing).
- (3) In addition to the *guidance* at ■ COLL 5.7.11 G the *authorised fund manager* should, as part of its due diligence process, consider whether the property of each of the second *schemes* is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second *scheme* and, if not, what controls over the property of the second *scheme* are in place to protect investors.

**Delivery of property under a transaction in derivatives or a commodities contract**

8.4.6

**R**

- (1) An *authorised fund manager* must take reasonable care to determine the following when entering into any transaction in *derivatives* or any *commodity* contract which may result in any asset becoming part of the *scheme property*:
  - (a) if it is an asset in which the *scheme property* could be invested, that the transaction:
    - (i) can be readily closed out; or
    - (ii) would at the expected time of delivery relate to an asset which could be included in the *scheme property* under the *rules* in this chapter; or
  - (b) in any other case that the transaction can be readily closed out.
- (2) An *authorised fund manager* may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the *unitholders*, provided it has the consent of the *depository*.
- (3) Any asset within (1) acquired in accordance with (2) may form part of the *scheme property* despite any other *rule* in this chapter until the position can be rectified.

**Cover for transactions in derivatives and forward transactions**

8.4.7

**R**

- (1) A transaction in *derivatives* or a forward transaction may be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under (2).
- (2) Exposure is globally covered if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure taking into account any reasonably foreseeable market movement.
- (3) The total exposure relating to *derivatives* held in a *qualified investor scheme* may not exceed the net value of the *scheme property*.
- (4) No element of cover may be used more than once.

**Valuation of an OTC derivative**

8.4.7A

**R**

A transaction in an *OTC derivative* must be capable of valuation which it will only be if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:

- (1) on the basis of the pricing model; or
- (2) on some other reliable basis reflecting an up-to-date market value;

which has been agreed between the *authorised fund manager* and the *depository*.

### Continuing nature of limits and requirements

8.4.8

R

- (1) An *authorised fund manager* must, as frequently as necessary to ensure compliance with ■ COLL 8.4.7 R (2) and ■ COLL 8.4.7 R (4), recalculate the amount of cover required in respect of *derivatives* and forwards positions in existence under this chapter.
- (2) *Derivatives* and forwards positions may be retained in the *scheme property* only so long as they remain covered globally under ■ COLL 8.4.7 R.
- (3) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* positions and their contribution to the overall risk profile of the *scheme*.

### Permitted stock lending

8.4.9

R

- (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund manager*, may enter into a *repo* contract or a *stock lending* arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).
- (2) The *depository* must ensure that the value of any *collateral*, for the *stock lending* arrangement is at all times at least equal to the value of the securities transferred by the *depository*.
- (3) In the case of the expiry of validity of any *collateral*, the duty in (2) is satisfied if the *depository* or the *authorised fund manager*, as appropriate, takes reasonable care to determine that sufficient *collateral* will be transferred by close of business on the *day* of expiry.

8.4.9A

G

The *Money Market Funds Regulation* sets out restrictions in relation to *stock lending* and *repo* contracts that apply in respect of *regulated money market funds*.

### General power to borrow

8.4.10

R

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund manager*) may borrow money for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 100 % of the net value of the *scheme property* and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.
- (3) In this rule "borrowing" also includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.

- (4) Where the limit in (2) is breached, the *authorised fund manager* must take action in accordance with the principles set out in ■ COLL 8.5.3 R (3) to ■ COLL 8.5.3 R (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

### Investment in property

8.4.11

**R**

- (1) Any investment in land or a building held within the *scheme property* of a *qualified investor scheme* must be in an immovable within (2).
- (2) For an immovable :
- (a) it must be situated in a country or territory identified in the *prospectus*;
  - (b) the *authorised fund manager* must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and
  - (c) the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from the *appropriate valuer* that:
    - (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
    - (ii) states that in the *appropriate valuer's* opinion the interest in the immovable would if acquired by the *scheme*, be capable of being disposed of reasonably expeditiously at that valuation;
  - (d) unless (c) is satisfied, the *authorised fund manager* of an *AUT* or *ACS* or the *ICVC* must have received a report from an *appropriate valuer* valuing the interest in the immovable and stating that:
    - (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property*; and
    - (ii) in the opinion of the *appropriate valuer*, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and
  - (e) it must not be bought:
    - (i) if it becomes apparent to the *authorised fund manager* that the report in either (c) or (d) could no longer reasonably be relied upon; or
    - (ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).
- (3) Any contents of any building may be regarded as part of the relevant immovable.
- (4) An *appropriate valuer* must be a *person* who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - (b) is qualified to be a *standing independent valuer* of an *authorised fund* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;

- (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *authorised fund manager* and *depository* of the *AUT* or *ACS*; and
- (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

### Investment in overseas property through an intermediate holding vehicle

8.4.11A

R

- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.
- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

8.4.11B

G

- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
  - (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
  - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.



**Investment limits for immovables**

8.4.12

**R**

The following limits apply in respect of immovables held as part of the *scheme property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under ■ COLL 8.4.11 R (2)(c) or ■ COLL 8.4.11 R (2)(d) or ■ COLL 8.4.13 R, as appropriate;
- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*; and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme value* in any 12 *month* period, calculated at the date of the granting of the option.

**Standing independent valuer and valuation**

8.4.13

**R**

- (1) In relation to the appointment of a valuer the *authorised fund manager* must:
  - (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
  - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:
  - (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
  - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
  - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
  - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
    - (i) affect the outcome of a valuation of an immovable; or
    - (ii) cause the valuer to decide to value under (a), instead of under (c),
 it must immediately inform the *standing independent valuer* of that matter;
  - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and

(f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKVPS 3 and 2.3 of UKVPGA 2 of the RICS Valuation – Global Standards 2017 UK national supplement 2018 (the RICS Red Book) or, in the case of overseas immovables, on an appropriate basis but subject to any provisions of the *instrument constituting the fund*.

(3) In relation to immovables:

- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

#### 8.4.14

**G** In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 8.4.13R (2)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

## 8.5 Powers and responsibilities

### Application

8.5.1

R

- (1) Subject to (2) and (3), this section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager*, any other *directors* of an *ICVC* and the *depository* of a *qualified investor scheme*.
- (2) ■ COLL 8.5.9R(1) to (8) and (10) do not apply where the *qualified investor scheme* is a *regulated money market fund*.
- (3) Where a *qualified investor scheme* is a *regulated money market fund*, ■ COLL 8.5.2R and ■ COLL 8.5.3R apply to the *authorised fund manager* and *depository* of that scheme to the extent the provisions are consistent with the requirements of the *Money Market Funds Regulation*.

### Functions of the authorised fund manager

8.5.2

R

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
  - (a) the *instrument constituting the fund*;
  - (b) the applicable *rules*;
  - (c) the most recently published *prospectus*;
  - (d) for an *ICVC*, the *OEIC Regulations*; and
  - (e) where applicable, the *Money Market Funds Regulation*.
- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
- (3) The *authorised fund manager* must:
  - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
  - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
  - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:

- (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
- (ii) by the *ACD* to the *ICVC*;
- (iii) by the *ICVC* to the *ACD*;
- (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
- (v) by the *depository*; (for the account of the *AUT* or *ACS*) to the *authorised fund manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the *OEIC Regulations*;
- (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the *rules* in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
- (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the *classes* of such *units*, and of the balance of any acquisitions and disposals.

#### Duties of the authorised fund manager: investment and borrowing powers

##### 8.5.3

**R**

- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 8.4 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 8.4 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

#### Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

##### 8.5.3A

**R**

Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a *foreign law contract* entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 8.2.6 R(2)(4A) and ■ COLL 8.2.6 R(2)(4B)), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

8.5.3B

**G**

In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the *foreign law contract*.

#### Duties of the depositary

8.5.4

**R**

- (1) The *depositary* is responsible for the safekeeping of all the *scheme property*.
- (2) The *depositary* must:
  - (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
  - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
  - (c) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;
  - (d) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions;
  - (e) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
  - (f) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 8.5.15 R (Income);
  - (g) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
    - (i) ■ COLL 8.4 (Investment and borrowing powers);
    - (ii) ■ COLL 8.5.9 R (Valuation, pricing and dealing);
    - (iii) ■ COLL 8.5.15 R (Income); and
    - (iv) where applicable, the provisions of the *Money Market Funds Regulation* relating to investment and borrowing powers, valuation, pricing, and dealing, and income.
  - (h) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
  - (i) be responsible for any other duties as set out in the *instrument constituting the fund*.

(3) If a relevant *ICVC* ceases to have any *directors*, the *depository* may act in accordance with ■ COLL 6.5.6 R(*ICVC* without a director).

(4) This *rule* applies to the *depository* of a *scheme* managed by a *full-scope UK AIFM* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[**Note:** Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depository* of a *qualified investor scheme* managed by a *small authorised UK AIFM*.]

**Delegation**

8.5.5

**R**

- (1) A *small authorised UK AIFM* (or in addition any other *director* in the case of an *ICVC* managed by a *small authorised UK AIFM*) may delegate any function to any *person*.
- (2) (a) The *depository* of a *scheme* managed by a *small authorised UK AIFM* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depository* to perform its functions.  
 (b) However, it must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.
- (3) Subject to any provisions of the *OEIC Regulations*, the delegator in (1) and (2) will not be responsible under the *rules* in *COLL* for any act or omission of the delegate provided that the delegator can show:
  - (a) that it was reasonable for the delegator to obtain assistance to perform the function in question;
  - (b) that the delegate was and remained competent to provide that assistance; and
  - (c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

**Delegation and responsibility for regulatory obligations**

8.5.6

**G**

*Directors* of an *ICVC*, *authorised fund managers* and *depositories* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

**Conflicts of interest**

8.5.7

**R**

- (1) The *authorised fund manager* and the *depository* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.

- (2) Paragraph (1) is subject to any provision in the *instrument constituting the fund* and the *prospectus* imposing a prohibition in relation to any type of transaction.

**The register of Unitholders: AUTs or ACSs**

8.5.8

**R**

- (1) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (in accordance with their responsibilities as set out in the *instrument constituting the fund*) must maintain a *register of unitholders* as a *document* in accordance with this *rule*.
- (2) The *register* must contain:
  - (a) the name and address of each *Unitholder* (for joint *Unitholders* no more than four need to be registered);
  - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
  - (c) the date on which the *Unitholder* was registered in the *register* for the *units* standing in his name.
- (3) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *authorised fund manager* must immediately notify the *depository* of an *AUT* or *ACS* of any information he receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

**Valuation, pricing and dealing**

8.5.9

**R**

- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
- (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
- (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
- (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the fund* and the *prospectus*, as appropriate.
- (4A) [deleted]
- (4B) [deleted]
- (5) The *scheme* must have a *valuation point* on each *dealing day*.

- (5A) [deleted]
- (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
- (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.
- (8) [deleted]
- (9) The *authorised fund manager* must publish in an appropriate manner the *price* of any type of *unit* based on the valuation carried out in accordance with (6).
- (10) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
- (11) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

### Profits from dealing as principal

8.5.9-B

R

- (1) Where an *authorised fund manager*:
- accepts instructions to *sell* and *redeem units as principal*; and
  - is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,
- subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was sold (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.
- (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3), when dealing as *principal* in relation to:
- a *unit issued* at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager as principal*; and
  - a *unit redeemed* and *cancelled* at that *valuation point*.
- (3) The amount of the loss referred to in (2) is:
- for *units issued* in accordance with (2)(a), the difference between the *issue price* of a *unit* and the *sale price* of that *unit*, less any *preliminary charge*;
  - for *units cancelled* in accordance with (2)(b), the difference between the *cancellation price* of a *unit* and the *redemption price* of that *unit*, before any *redemption charge* is applied.



**8.5.9-A**

**G**

- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent *valuation point*.
- (5) This *rule* applies to the *redemption* and *sale* of *units* of different *classes* at the same *valuation point*, if those *classes* are treated as one for the purpose of ■ COLL 8.5.10AR.

- (1) The *authorised fund manager* may commit its own capital to hold *units* for *dealing as principal* and may seek to profit from gains in the value of the *units* it holds, when it *issues* or *redeems units* at one *valuation point* then *sells* or *cancels* them at a later *valuation point*. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the *units* fall in value, or from the ability to match simultaneous *sales* and *redemptions* at different *prices* at no risk to its own capital.
- (2) The *AFM* may allocate any amount arising under ■ COLL 8.5.9-BR(1) in the interests of investors by paying it into *scheme property* for the benefit of all *unitholders*. Alternatively, the *AFM* may redistribute it individually among the transacting investors.
- (3) Where the *AFM* intends to allocate a payment to *scheme property*, it should determine if the amount (when added to any other amounts of the same kind relating to that *class of units*) would, if taken into account in the *scheme's* valuation, affect the accuracy of the *unit prices* to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the *scheme* until the payment is transferred. Such payments into *scheme property* should be made regularly and no less frequently than payments for the *AFM's* management charge are transferred out of *scheme property*.
- (4) The calculation to be performed under ■ COLL 8.5.9-BR should be carried out in relation to each *valuation point* of the *scheme* on a timely basis. Where it is not practical to do this before *unit prices* are calculated and published, the *AFM* should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to *scheme property*.

**8.5.9A**

**R**

[deleted]

**8.5.9B**

**G**

[deleted]

**Issues and cancellations of units**

**8.5.10**

**R**

- (1) The *authorised fund manager* must:
  - (a) ensure that at each *valuation point* there are at least as many *units* in issue of any *class* as there are *units* registered to *unitholders* of that *class*; and
  - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.

- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*, and, where applicable, in accordance with the *Money Market Funds Regulation*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *depository* of the *AUT* or *ACS* to *issue* or cancel *units* where the *authorised fund manager* would otherwise be obliged to *sell* or redeem the *units* in the manner set out in the *prospectus*.
- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

#### Issue and cancellation of units in multiple classes

8.5.10A

R

If a *qualified investor scheme* has two or more *classes* of *unit* in *issue*, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
  - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
  - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

#### Transfer of units in an ACS

8.5.10B

R

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 8.2.6R(2)(6)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and ■ COLL 8.3.4R(5B)(2) (Table: contents of qualified investor scheme prospectus), *units* in the *ACS* may only be transferred to a *person* :

- (a) who is a:
  - (i) professional ACS investor; or
  - (ii) large ACS investor; or
  - (iii) person who already holds units in the scheme; and
- (b) to whom units in a qualified investor scheme may be promoted under ■ COBS 4.12B.7R.

**8.5.10C** G The FCA recognises that some transfers of units arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 8.5.10E R (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those units.

**Responsibilities of the authorised contractual scheme manager in relation to ACS units**

**8.5.10D** R (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *qualified investor scheme* must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an *intermediate Unitholder in a qualified investor scheme*, unless:

- (a) that person is a:
  - (i) professional ACS investor; or
  - (ii) large ACS investor; or
  - (iii) person who already holds units in the scheme; and
- (b) units in a *qualified investor scheme* may be promoted to that person under ■ COBS 4.12B.7R.

(2) The *authorised contractual scheme manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

**Redemption of ACS units in a QIS by an authorised contractual scheme manager**

**8.5.10E** R The *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must *redeem units* in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in ■ COLL 8 Annex 2(1) and (2) (ACS Qualified Investor Schemes: eligible investors).

**Sale and redemption**

**8.5.11** R (1) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale of units* to any eligible investor (within any conditions in the *instrument constituting the fund* and the *prospectus* which must be fair and reasonable as between all

*unitholders* and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such sale.

- (2) The *authorised fund manager* must, at all times during the *dealing day*, effect a *redemption* on the request of any eligible *unitholder* (within any conditions in the *instrument constituting the fund* and the *prospectus*) of *units* owned by that *unitholder*, unless the *authorised fund manager* has reasonable grounds to refuse such *redemption*.
- (3) On agreeing to a *redemption* of *units* within (2), the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *instrument constituting the fund* or the *prospectus*, unless it has reasonable grounds for withholding payment.
- (4) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which must be fair and reasonable as between redeeming *unitholders* and continuing *unitholders*.

#### Limited redemption periods

8.5.12

G

The maximum period between *dealing days* for a *qualified investor scheme* will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the *scheme*. For instance, for a *scheme* aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between *dealing days* for liquidity reasons than for a *scheme* investing predominantly in listed *securities*.

#### Property Authorised Investment Funds

8.5.12A

R

- (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").
  - (1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:
    - (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
    - (b) in their capacity as *trustees* of the *unit trust scheme*, the *trustees* are chargeable in the *United Kingdom* either to income tax or to corporation tax.
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
  - (a) notify the *body corporate* of that event;
  - (b) not pay any income distribution to the *body corporate*; and
  - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.

- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

8.5.12B **G** Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

### Payments

8.5.13 **R**

- (1) An *ICVC* must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

### Exemption from liability to account for profits

8.5.14 **G** Except as provided in ■ COLL 8.5.9-BR, an *affected person* is not liable to account to another *affected person* or to the *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

### Income

8.5.15 **R**

- (1) A *qualified investor scheme* must have:
  - (a) an *annual accounting period*;
  - (b) a *half-yearly accounting period*; and
  - (c) an *accounting reference date*;
 the details of which must be set out in the *prospectus*.
- (1A) ■ COLL 6.8.2 R (2) to ■ COLL 6.8.2 R (7) (Accounting periods) also apply to the *half-yearly accounting period* and *annual accounting period* of a *qualified investor scheme*.

- (2) A *qualified investor scheme* must have an *annual income allocation date*, which must be within four months of the *accounting reference date*.
- (3) A *qualified investor scheme* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (3A) ■ COLL 6.8.3 R (3) (Income allocation and distribution) to ■ COLL 6.8.3A G (Allocation of income to difference classes of unit) also apply to a *qualified investor scheme*.
- (4) [deleted]
- (5) [deleted]
  - (a) [deleted]
  - (b) [deleted]
  - (c) [deleted]

**Application of assessment of value and independent director rules**

8.5.16 **R** ■ COLL 8.5.17R to ■ COLL 8.5.22R apply to an *authorised fund manager* (other than one which is managing an *authorised fund* under a *temporary permission*) of an *AUT*, *ACS* or *ICVC*.

**Assessment of value**

8.5.17 **R**

- (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.
- (2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class* of *units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

8.5.18 **G** The *guidance* in ■ COLL 6.6.22G applies to interpreting the requirements of ■ COLL 6.6.21R as applied by ■ COLL 8.5.17R.

8.5.19 **E** Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COLL 6.6A.2R, ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

**Independent directors**

8.5.20 **R**

- (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members,

the *AFM* must instead ensure that at least two of its members are independent natural *persons*.

- (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
- (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
- (4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
  - (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.
  - (c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.
- (5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten year period referred to in (4).
- (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.

**8.5.21** G The *guidance* in ■ COLL 6.6.26G applies to interpreting the requirement for independence in ■ COLL 8.5.20R.

**Allocation of responsibility for compliance to an approved person**

**8.5.22** R (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 8.5.17R, ■ COLL 8.5.20R, and ■ COBS 2.1.4R to an *approved person*.

(2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.

## 8.6 Termination, suspension, and schemes of arrangement

### Application

8.6.1

R

This section applies to:

- (1) an *authorised fund manager*, the *directors*, and the *depository* of a *qualified investor scheme*; and
- (2) an *ICVC* which is a *qualified investor scheme*.

### Termination

8.6.2

R

For a *qualified investor scheme* the provisions in ■ COLL 7.3 to ■ COLL 7.5 will apply as appropriate as if ■ COLL 7 applied to *qualified investor schemes*.

### Suspension

8.6.3

R

- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, temporarily suspend *dealings* in *units* of the *scheme*, a *sub-fund* or a *class*.
- (2) Any suspension within (1) must only be where the *authorised fund manager* has determined on reasonable grounds that there is good and sufficient reason in the interests of *unitholders* or potential *unitholders* and the *authorised fund manager* must have regard to the interests of all the *unitholders* in the *scheme* in reaching such an opinion.
- (3) At the commencement of suspension under (1), the *authorised fund manager* must immediately inform the *FCA* of the suspension and the reasons for it.
- (3A) 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.
- (3B) The *authorised fund manager* and the *depository* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.



- (4) The suspension of *dealings* in *units* must cease, as soon as (2) no longer applies.
- (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 (3).
- (5) The *authorised fund manager* must inform the *FCA* immediately of the resumption of *dealings*.

8.6.4 **G** [deleted]

**Schemes of arrangement**

8.6.5 **R** In relation to an *ICVC*, *ACS* or an *AUT* which is a *qualified investor scheme*, the provisions in **COLL 7.6** (Schemes of arrangement) will apply as appropriate to the *authorised fund manager*, any other *directors* of the *ICVC* and the *depository* as if **COLL 7.6** applied to a *qualified investor scheme* and did not exclude *unitholders* becoming *unitholders* in another *qualified investor scheme*.



## ACS Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3 R and 8.1.4 G.

For the purposes of the *rule* on qualified investors in a *qualified investor scheme* which is an ACS (COLL 8.1.3R (3)), the *authorised contractual scheme manager* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a *person* :

- (1) who is a:
  - (a) *professional ACS investor*; or
  - (b) *large ACS investor*; or
  - (c) *person* who already holds *units* in the *scheme*; and
- (2) to whom *units* in a *qualified investor scheme* may be promoted to that *person* under COBS 4.12B.7R.

