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 depositary 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 G

(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 4.12.4R.

(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

(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 4.12.3 R. See also COBS 4.12.13 G.

(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 4.12.4 R 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

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

Classes of unit

8.2.2 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 (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) [deleted]

Undesirable and misleading names

8.2.4 COLL 6.9.6 G (Undesirable or misleading names) contains guidance as to names which may be undesirable or misleading.

Instrument constituting the fund

8.2.5 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 This table belongs to COLL 8.2.5 R

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<th>Description of the authorised fund</th>
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<td>Information detailing:</td>
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<td>(1) the name of the authorised fund;</td>
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(2) that the authorised fund is a qualified investor scheme; and

(3) in the case of an ICVC, whether the head office of the company is situated in England and Wales or Wales or Scotland or Northern Ireland.

Property Authorised Investment Funds

1A 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 in accordance with 6A 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.

2 Constitution

The following statements:

(1) the scheme property of the scheme is entrusted to a depository for safekeeping (subject to any exception permitted by the rules);

(2) if relevant, the duration of the scheme is limited and, if so, for how long;

(3) charges and expenses of the scheme may be taken out of scheme property;

(4) for an ICVC:

(a) what the maximum and minimum sizes of the scheme's capital are; and

(b) the unitholders are not liable for the debts of the company;

(4A) for an ICVC which is an umbrella, a statement that 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;

(4B) for a co-ownership scheme which is an umbrella, 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;

(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:
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<td>is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;</td>
<td>is binding on each unitholder as if he had been a party to it and that he is bound by its provisions; and</td>
<td>authorises and requires the trustee and the manager to do the things required or permitted of them by its terms;</td>
<td>subject to the provisions of the trust deed and all the rules made under section 247 of the Act (Trust scheme rules):</td>
<td>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</td>
<td>payments to the trustee by way of remuneration are authorised to be paid (in whole or in part) out of the scheme property; and</td>
<td>for an ACS:</td>
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<tr>
<td>(a)</td>
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<td>(iv)</td>
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<td>the contractual scheme deed:</td>
<td>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</td>
<td>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);</td>
<td>states that units may not be issued to a person other than a person:</td>
<td>who is a:</td>
<td>to whom units in a qualified investor scheme may be promoted under COBS 4.12.4 R;</td>
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<td>professional ACS investor;</td>
<td>large ACS investor; or</td>
<td>person who already holds units in the scheme; and</td>
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(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 *depositary* 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 4.12.4 R; 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 pro-
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 depositary 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 depositary 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.

4 Units in the scheme

A statement of:

(1) the classes of units which the scheme may issue, indicating, for a scheme which is an umbrella, which class or classes may be issued in respect of each sub-fund; and
(2) the rights attaching to units of each class (including any provisions for the expression in two denominations of such rights).

5 **Limitation on issue of and redemption of units**

Details as to:

1. the provisions relating to any restrictions on the right to redeem units in any class; and
2. the circumstances in which the issue of the units of any particular class may be limited.

6 **Income and distribution**

Details of the person responsible for the calculation, transfer, allocation and distribution of income for any class of unit in issue during the accounting period.

**Redemption or cancellation of units on breach of law or rules**

6A A statement that where any holding of units by a unitholder is (or is reasonably considered by the authorised fund manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.

7 **Base currency**

A statement of the base currency of the scheme.

8 **Meetings**

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for unitholders.

9 **Powers and duties of the authorised fund manager and depositary**

Where relevant, details of any function to be undertaken by the authorised fund manager and depositary which the rules in COLL require to be stated in the instrument constituting the fund.

10 **Termination and suspension**

Details of:

1. the grounds under which the authorised fund manager may initiate a suspension of the scheme and any associated procedures; and
2. the methodology for determining the rights of unitholders to participate in the scheme property on winding up.

10A **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 that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

11 **Other relevant matters**

Details of those matters which enable the scheme, authorised fund manager or depositary to obtain any privilege or power conferred by the rules in COLL which is not otherwise provided for in the instrument constituting the fund.

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**Limited issue**

8.2.7 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 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 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 The PRIIPs Regulation requires the manufacturer of a PRIIP to draw up a key information document in accordance with the PRIIPs
Regulation before that PRIIP is made available to retail investors (as defined in the PRIIPs Regulation).

(2) The requirements of the PRIIPs Regulation are directly applicable.

(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

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

This table belongs to COLL 8.3.2 R.

1 Document status

A statement that this document is the prospectus of the authorised fund valid as at a particular date which shall be the date of the document.

2 Description of the authorised fund

Information detailing:

(1) the name of the authorised fund;
(1A) its FCA product reference number (PRN);
(2) that the authorised fund is either an ICVC, ACS or an AUT;
(3) that the scheme is a qualified investor scheme;
(4) where relevant, that the unitholders in an ICVC are not liable for the debts of the authorised fund;
(5) where relevant, the address of the ICVC’s head office and the address in the United Kingdom for service on the ICVC of documents required or authorised to be served on it;
(6) the effective date of the authorisation order made by the FCA and, if the duration of the authorised fund is not unlimited, when it will or may terminate;
(7) the base currency for the authorised fund;
(8) where relevant, the maximum and minimum sizes of the ICVC’s capital;
(9) the circumstances in which the authorised fund may be wound up under the rules in COLL and a summary of the procedure for, and the rights of unitholders under, such a winding up; and
(10) for an ACS that is a limited partnership scheme, the address of the proposed principal place of business of the limited partnership scheme.

3 Investment objectives and policy

(1) Sufficient information to enable a unitholder to ascertain:
(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 4.12.4 R.

(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 4.12.4 R.

(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
The authorised fund manager

The following particulars of the authorised fund manager:

1. its name and the nature of its corporate form;
2. the country or territory of its incorporation;
3. the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
4. if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
5. the address of its registered office, its head office, and, if different, the address of its principal place of business in the United Kingdom;
6. the amount of its issued share capital and how much of it is paid up;
7. for an ICVC, a summary of the material provisions of the contract between the ICVC and the authorised fund manager which may be relevant to unitholders including provisions (if any) relating to termination, compensation on termination and indemnity; and
8. for an AUT, the names of the directors of the authorised fund manager.

Directors of an ICVC, other than the ACD

Other than for the ACD:

1. the names and positions in the ICVC of the directors; and
2. the manner, amount and calculation of the remuneration of the directors.

The depositary

The following particulars of the depositary:

1. its name and the nature of its corporate form;
2. the country or territory of its incorporation;
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
4. if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom.

The investment adviser

If an investment adviser is retained in connection with the business of the authorised fund, its name and whether or not it is authorised by the FCA.

The auditor

The name of the auditor of the authorised fund.

The register of Unitholders

Details of the address in the United Kingdom where the register of unitholders is kept and can be inspected by unitholders.

Payments out of the scheme property

The payments that may be made out of the scheme property to
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 depositary 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).

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

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 8.3.5CR (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 depositary in accordance with COLL 8.3.5D R (Report of the depositary); and

(d) the report of the auditor in accordance with COLL 4.5.12 R (Report of the auditor).

(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; and
   (iii) comparative information in accordance with COLL 4.5.10R (1A) and (2A);

(b) [deleted]

(c) the report of the depositary 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 depositary 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

(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

(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; and

(b) the report of the authorised fund manager in accordance with COLL 8.3.5C R.

(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

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

(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

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 (1) Subject to (1A), this section applies to an ICVC which is a qualified investor scheme and an authorised fund manager and a depositary 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 (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 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 (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

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

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

(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**

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.

(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 5.7.11 G (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 depositary.

(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 depositary.
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), re-calculate 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 depositary at the request of the ICVC, or the depositary 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 depositary 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 depositary.

(3) In the case of the expiry of validity of any collateral, the duty in (2) is satisfied if the depositary 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.

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 depositary 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 depositary and each of the directors of the ICVC or of the authorised fund manager and depositary 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

(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.

(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 depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.
Investment limits for immovables

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

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 depositary 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 depositary 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 UKPS 2.3 of the RICS Valuation Standards (The Red Book) (9th edition published November 2013) 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.

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 (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 depositary 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 depositary 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 (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 depositary 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 depositary; or
(v) by the depositary; (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**

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 depositary has given its consent.

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

**8.5.3A**

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.

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

(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 depositary may act in accordance with ■ COLL 6.5.6 R(ICVC without a director).

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 depositary 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 depositary 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 depositaries 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 depositary 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 depositary 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 depositary 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 depositary 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

(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

(1) Where an *authorised fund manager*:

(a) accepts instructions to *sell* and *redeem units* as *principal*; and

(b) 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:

(a) 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*;

(b) 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.

(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.

#### 8.5.9-A

(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 depositary 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 **depositary** 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**

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 **depositary** 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**

(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 **Table: contents of the instrument constituting the fund** and **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 **Table: contents of qualified investor scheme prospectus**.

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 4.12.4 R.

(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**

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**

(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").

(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.

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**

(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

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

(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 an EEA AIFM) 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.

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

(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 This section applies to:

(1) an authorised fund manager, the directors, and the depositary of a qualified investor scheme; and

(2) an ICVC which is a qualified investor scheme.

Termination

8.6.2 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 (1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary 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 depositary 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 depositary 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.

Schemes of arrangement

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 depositary 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 4.12.4 R.