

Chapter 8

Qualified investor schemes

8.5 Powers and responsibilities

Application

8.5.1

R

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

Functions of the authorised fund manager

8.5.2

R

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

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

Duties of the authorised fund manager: investment and borrowing powers

8.5.3

R

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

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

8.5.3A

R

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

8.5.3B

G

(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

8.5.4

R

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

- (3) If a relevant *ICVC* ceases to have any *directors*, the *depository* may act in accordance with ■ COLL 6.5.6 R(*ICVC* without a director).
- (4) This *rule* applies to the *depository* of a *scheme* managed by a *full-scope UK AIFM* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

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

Delegation

8.5.5

R

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

Delegation and responsibility for regulatory obligations

8.5.6

G

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

Conflicts of interest

8.5.7

R

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

8.5.8

R

- (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

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

8.5.9

R

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

R

(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.

8.5.9-A

G

- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent *valuation point*.
- (5) This rule applies to the *redemption* and *sale of units* of different *classes* at the same *valuation point*, if those *classes* are treated as one for the purpose of ■ COLL 8.5.10AR.
- (1) The *authorised fund manager* may commit its own capital to hold *units* for *dealing as principal* and may seek to profit from gains in the value of the *units* it holds, when it *issues* or *redeems units* at one *valuation point* then *sells* or *cancels* them at a later *valuation point*. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the *units* fall in value, or from the ability to match simultaneous *sales* and *redemptions* at different *prices* at no risk to its own capital.
- (2) The *AFM* may allocate any amount arising under ■ COLL 8.5.9-BR(1) in the interests of investors by paying it into *scheme property* for the benefit of all *unitholders*. Alternatively, the *AFM* may redistribute it individually among the transacting investors.
- (3) Where the *AFM* intends to allocate a payment to *scheme property*, it should determine if the amount (when added to any other amounts of the same kind relating to that *class of units*) would, if taken into account in the *scheme's* valuation, affect the accuracy of the *unit prices* to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the *scheme* until the payment is transferred. Such payments into *scheme property* should be made regularly and no less frequently than payments for the *AFM's* management charge are transferred out of *scheme property*.
- (4) The calculation to be performed under ■ COLL 8.5.9-BR should be carried out in relation to each *valuation point* of the *scheme* on a timely basis. Where it is not practical to do this before *unit prices* are calculated and published, the *AFM* should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to *scheme property*.

8.5.9A

R

[deleted]

8.5.9B

G

[deleted]

Issues and cancellations of units

8.5.10

R

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

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

Issue and cancellation of units in multiple classes

8.5.10A

R

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

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

Transfer of units in an ACS

8.5.10B

R

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

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

8.5.10C

G

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

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

8.5.10D

R

- (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *qualified investor scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate Unitholder in a qualified investor scheme*, unless:
 - (a) that *person* is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person who already holds units in the scheme*; and
 - (b) *units* in a *qualified investor scheme* may be promoted to that *person* under ■ COBS 4.12B.7R.
- (2) The *authorised contractual scheme manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

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

8.5.10E

R

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

Sale and redemption

8.5.11

R

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

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

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

Limited redemption periods

8.5.12

G

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

Property Authorised Investment Funds

8.5.12A

R

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

		<p>(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the <i>authorised fund manager</i> reasonably considers to be appropriate having regard to the interests of the <i>unitholders</i> as a whole.</p>
8.5.12B	G	<p>Reasonable steps to monitor the maximum allowable include:</p> <p>(1) regularly reviewing the <i>register</i>; and</p> <p>(2) taking reasonable steps to ensure that <i>unitholders</i> are kept informed of the requirement that no <i>body corporate</i> may hold more than 10% of the net asset value of a <i>property authorised investment fund</i>.</p>
8.5.13	R	<p>Payments</p> <p>(1) An <i>ICVC</i> must not incur any expense in respect of the use of any movable or immovable property unless the <i>scheme</i> is <i>dedicated</i> to such investment or such property is necessary for the direct pursuit of its business.</p> <p>(2) Payments out of the <i>scheme property</i> may be made from <i>capital property</i> rather than from <i>income property</i>, provided the basis for this is set out in the <i>prospectus</i>.</p> <p>(3) Donations to one or more <i>registered charities</i> for Sharia compliance purposes (in this <i>rule</i>, ‘purification’), as set out in and authorised by the <i>prospectus</i> of the <i>scheme</i>, may be recovered from <i>income property</i> of the <i>scheme</i> where they represent the required percentage of the <i>income property</i> recognised for purification, as advised by a <i>person</i> with appropriate knowledge of finance and Islamic law.</p>
8.5.13A	G	<p>The <i>person</i> referred to in ■ COLL 8.5.13R(3) should be independent of the <i>authorised fund manager</i> and any <i>registered charity</i> to which payments may be made.</p>
8.5.14	G	<p>Exemption from liability to account for profits</p> <p>Except as provided in ■ COLL 8.5.9-BR, an <i>affected person</i> is not liable to account to another <i>affected person</i> or to the <i>unitholders</i> of the <i>scheme</i> for any profits or benefits it makes or receives that are made or derived from or in connection with:</p> <p>(1) <i>dealings</i> in the <i>units</i> of a <i>scheme</i>; or</p> <p>(2) any transaction in <i>scheme property</i>; or</p> <p>(3) the supply of services to the <i>scheme</i>;</p> <p>where disclosure of the non-accountability has been made in the <i>prospectus</i> of the <i>scheme</i>.</p>

Income

8.5.15

R

- (1) A *qualified investor scheme* must have:
 - (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*;the details of which must be set out in the *prospectus*.
- (1A) ■ COLL 6.8.2 R (2) to ■ COLL 6.8.2 R (7) (Accounting periods) also apply to the *half-yearly accounting period* and *annual accounting period* of a *qualified investor scheme*.
- (2) A *qualified investor scheme* must have an *annual income allocation date*, which must be within four months of the *accounting reference date*.
- (3) A *qualified investor scheme* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (3A) ■ COLL 6.8.3 R (3) (Income allocation and distribution) to ■ COLL 6.8.3A G (Allocation of income to difference classes of unit) also apply to a *qualified investor scheme*.
- (4) [deleted]
- (5) [deleted]
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]

Application of assessment of value and independent director rules

8.5.16

R

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

Assessment of value

8.5.17

R

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

8.5.18

G

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

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

Independent directors

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

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

8.5.22

R

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*.