

Amendments to the Collective Investment Schemes Regulatory Guide (COLLG)

In this document, underlining indicates new text and striking through indicates deleted text.

1 Overview

1.1 Introduction

About this guide

- 1.1.1 G (1) This Collective Investment Scheme Information Guide (~~COLLG~~ COLLG) contains some key facts on the regulation of *collective investment schemes* in the *United Kingdom*. It will be of interest primarily to those who wish to gain a general understanding of the regulatory regime governing these *schemes*.
- (2) This guide is intended to complement the *rules* and *guidance* in the ~~New~~ Collective Investment Schemes sourcebook (*COLL*) ~~and~~. It also explains how an authorised *firm* should go about applying for authorisation of a *scheme* under the *Act* and the *OEIC Regulations*.
- (3) This guide does not contain information on unregulated *schemes*. Such *schemes* cannot be *marketed* to the general public and are otherwise restricted in their promotion.
- (4) The material in this guide is intended only as a summary ~~only~~ of a number of significant legal provisions affecting authorised *collective investment schemes*. It does not constitute *guidance* under sections 157 and 158 of the *Act* and does not have the status of the guidance in the *Handbook*. This also means that *GEN 2.2* (Interpreting the Handbook) does not apply. If you have any doubt about any legal provision you should seek appropriate legal advice ~~from your legal adviser~~.
- (5) This guide italicises words that are defined in the *Glossary* that forms part of the *Handbook*. For the full definition of the term, the reader should consult the *Glossary*.
- (6) The Overview is current as of ~~May 2004~~ January 2009. The Overview does not remove the need for ~~firms~~ firms to keep up-to-date with regulatory developments and to consider the potential impact on business of proposed changes; — for example, the regulatory framework of changes required by further European initiatives.

Structure of collective investment regulation in the ~~UK~~ United Kingdom

- 1.1.2 G (1) There are three broad levels of regulation of *collective investment schemes* in the *United Kingdom*. These can be summarised as European regulation, ~~HM Government~~ UK legislation and regulation by the FSA. They should be viewed as a hierarchy of rules that, at each level, deals with more specific aspects of *collective investment scheme* regulation.
- (2) European *collective investment scheme* product regulation was introduced in 1985 by the *UCITS Directive* and ~~this~~ has been updated on several occasions by amendments to ~~the that~~ Directive which came into force in February 2004. If a ~~UK~~ scheme is established and authorised in the United Kingdom and complies with the ~~Directive's~~ UCITS Directive's provisions, ~~it is~~ (a UCITS scheme) ~~it~~ and can be promoted throughout the *EEA*. However, not all *regulated collective investment schemes* are *UCITS schemes*. *COLLG 2* provides more detail on the scope and contents of the *UCITS Directive*.
- (3) The main ~~Government~~ UK legislation is the *Act* (under which *AUTs* operate) and the ~~OEIC regulations~~ Regulations (under which *ICVCs* operate). *COLLG 3* provides details on the *FSA's* responsibilities under the *Act*; how a *firm* may go about applying for authorisation of a *unit trust scheme* or recognition of an overseas *scheme*; and what notifications are required to the *FSA* in terms of changes to those ~~schemes~~ schemes. *COLLG 4* provides details on the *FSA's* responsibilities under the ~~OEIC regulations~~ Regulations; how a *firm* may go about applying for authorisation of an *ICVC*; and what notifications are required to the *FSA* in respect of changes to the *ICVC*.
- (4) The *Handbook* includes a specialist sourcebook *COLL*, which is structured in a way that gives *rules* and *guidance* on specific aspects of *AUT* and *ICVC* regulation. *COLLG 5* provides details of the structure of ~~COLL~~ COLL.

What are regulated collective investment schemes?

- 1.1.3 G Under section 238 of the *Act* (Restrictions on promotion), only certain kinds of *collective investment schemes* may be promoted to the public by *authorised persons*. These are:
- (1) authorised funds, which are authorised unit trust schemes (AUTs) or ICVCs constituted in the *United Kingdom* as described in more detail below; and
- (2) recognised schemes, which are collective investment schemes constituted outside the *United Kingdom* and recognised by the *FSA* under:

- (a) section 264 of the *Act* (Schemes constituted in other *EEA States*) - these are *schemes* that qualify under the *UCITS Directive*; or
- (b) section 270 of the *Act* (Schemes authorised in designated countries or territories); or
- (c) section 272 of the *Act* (Individually recognised overseas schemes).

What are ICVCs?

- 1.1.4 G (1) An *ICVC* is the *UK*-based form of an *open-ended investment company* as defined by section 236 of the *Act* (Open-ended investment companies). Section 262 of the *Act* (Open-ended investment companies) empowers the Treasury to make provisions relating to *open-ended investment companies* (the *OEIC Regulations*) which enable the establishment of *ICVCs*. Paragraph 1(3) of Schedule 5 to the *Act* states that an authorised *open-ended investment company* is an *authorised person*. So, an *ICVC* is an *authorised person*. The FSA may authorise an *ICVC* by making an *authorisation order* under regulation 14 of the *OEIC Regulations*.
- (2) An *ICVC* is constituted by an *instrument of incorporation*. Regulation 15(4) of the *OEIC Regulations* requires an *ICVC* to have at least one *director*. ~~A person who is~~ Where there is only one *director*, that *director* must be a *body corporate* with a *permission* to act as a sole *director* of an *ICVC*. *COLL* refers to this person as ~~must be~~ an *authorised corporate director* ('*ACD*'). A *depository* must take responsibility for the safekeeping of the *scheme property*, ~~and the *ACD*~~ and The *depository* must be independent of each other the *ICVC* and each of its *directors*. Under regulation 14 of the *OEIC Regulations* the *FSA* may authorise an *ICVC* by making an *authorisation order*.
- (3) The *directors* and the *depository* are required to comply with the *OEIC Regulations* and the *rules* in *COLL* and, in accordance with paragraph 6(1) of Schedule 2 to the *OEIC Regulations*, are also bound by the provisions of the *instrument of incorporation*.

What are AUTs?

- 1.1.5 G Under section 237 of the *Act* (Other definitions), a *unit trust scheme* is a *collective investment scheme* under which the property is held on trust for the *participants* by the *trustee*. An *AUT* is constituted by a *trust deed*, entered into by the *manager* and *trustee*. Under section 243(4) of the *Act*, (Authorisation orders) they must be independent of each other and *COLL* 6.9 (Ongoing responsibilities) provides *guidance* on what the *FSA* ~~consider~~ considers independence ~~means to mean~~. The *FSA* may authorise an *AUT* by making an *authorisation order*.

~~Duties and responsibilities of the authorised fund manager and depositary~~

- 1.1.6 G (1) ~~The *OEIC Regulations* include requirements that the business of an *ICVC* be managed:~~
- ~~(a) in accordance with the *FSA rules*; and~~
 - ~~(b) where there is only one *director*, that *director* must be a *body corporate* with the *permission* to act as a *director* of an *ICVC*.~~
- (2) ~~*COLL* refers to this person as an *ACD*. [deleted]~~

~~Content of *COLL* 6.6 (Powers and duties of the scheme, the authorised fund manager, and the depositary)~~

- 1.1.7 G (1) *COLL* 6.6 includes *rules*:
- (a) relating to the *authorised fund manager's* duties in respect of the management of the *scheme*;
 - (b) requiring the *depositary* to check that the *authorised fund manager* carries out certain of its functions in accordance with the applicable *rules* in ~~this sourcebook~~ *COLL*;
 - (c) relating to the *depositary's* duties in respect of the safe *custody* of the *scheme property*;
 - (d) requiring *firms* to avoid conflicts of interest that could prejudice investors; and
 - (e) to provide safeguards when certain of the functions of the *directors* or *depositary* of an *ICVC*, or the *manager* or *trustee* of an *AUT*, are carried out by a third party.
- (2) ~~For an *ICVC*, the *depositary* and the *directors* are required to comply with the *OEIC Regulations* and the *rules* in this sourcebook and, in accordance with paragraph 6(1) of Schedule 2 to the *OEIC Regulations*, are also bound by the provisions of the *instrument constituting the scheme*. [deleted]~~
- (3) The *directors* (including the *ACD*) and the *depositary* of an *ICVC*, and the *manager* and *trustee* of an *AUT*, may each to the extent permitted by this section *COLL*, retain the services of others to assist them to perform their respective functions.
- (4) *COLL* makes provision for how the *authorised fund manager* and the *depositary* may retire from their role and be replaced. It also provides for how an *ICVC* should be managed ~~Where~~ where there is a vacancy in the position of an *ACD*, the *directors* should appoint one or more

~~*authorised persons* to assist them in performing the functions that the ACD would otherwise be required to perform. Where and where there are no *directors*, the *depository's* powers are extended, temporarily, to enable it to manage the *scheme property*.~~

Authorisation to carry on regulated activities

- 1.1.8 G (1) The following constitute *regulated activities*:
- (a) *establishing, operating or winding up a collective investment scheme;*
 - (b) *acting as trustee of an authorised unit trust scheme;*
 - (c) *acting as depository of an open-ended investment company; and*
 - (d) *acting as sole director of an open-ended investment company.*
- (2) No person may carry on a regulated activity by way of business in the United Kingdom, or purport to do so, unless he is an *authorised person* (or an *exempt person*). This prohibition is referred to in the Act as the *general prohibition*. Guidance for persons considering carrying on regulated activities in the United Kingdom can be found in PERG. The FSA website “How do I get authorised” <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> gives guidance on how to apply to the FSA for a *Part IV permission*. This authorisation is different to the authorisation of an *ICVC* or of an *AUT*, as referred to in COLLG 1.1.4G and 1.1.5G respectively.
- (3) The FSA maintains a public register of *persons* who have a *permission* to carry on a *regulated activity*. The register also contains details of all *regulated collective investment schemes*. It can be consulted on the FSA’s website at www.fsa.gov.uk/Pages/register

2 European Legislation

2.1 Introduction

Background and scope

2.1.1 G (1) This section summarises the scope and content of the *UCITS Directive*, as amended (“the Directive”). The Directive establishes a degree of harmonisation of *EEA states’ States’* laws governing:

- (a) the activities of management companies;
- (b) the *schemes* they manage; and
- (c) how their *schemes’ units units* are sold to the public.

(2) The main topics governed by the Directive and summarised in this section concern:

- (a) the general scope of the Directive;
- (b) obligations of the *UCITS management company* and *depository*;
- (c) investment and borrowing ~~power~~ powers and limits;
- (d) information for investors;
- (e) how the management company passport works; and
- (f) *marketing* requirements.

General scope of the UCITS Directive

2.1.2 G (1) The Directive ~~is only relevant to~~ applies to any open-ended collective vehicles vehicle that is established and authorised in an EEA State and that falls within its scope, regardless of whether it is promoted in any other EEA State. However, the Directive applies only to schemes that promote to the general public within the EEA, so schemes that are restricted in their promotion fall outside the Directive’s scope. Furthermore, the Directive applies to any collective investment scheme falling within its scope, regardless of whether it is promoted in other EEA States.

(2) ~~The Furthermore, the~~ Directive does not cover *collective investment schemes* that are authorised in an *EEA state State* with different investment and borrowing powers to those covered by the Directive. So, ~~investment in~~ schemes that invest in (for example) real property and or commodities are not within the Directive’s scope.

Obligations on the management company and depositary

- 2.1.3 G (1) The ~~UCITS Directive~~ identifies the Directive assigns certain functions and requirements to a management company and a depositary and assigns certain functions to each. For management companies, the ~~Directive~~ lists the types of activities such firms undertake. As a result, the ~~FSA~~ has identified the *authorised fund manager* as the *UCITS management company*. So, a UK firm which wishes to operate a *UCITS scheme* ~~schemes~~ must first seek ~~authorisation~~ authorisation as a *UCITS management company*.
- (2) In addition, the Directive imposes certain conduct of business and financial resources *rules* on the ~~management company~~ UCITS management company. ~~The conduct of business rules are very similar to the rules placed on ISD firms and can be found in COB. The financial resources rules can be found in IPRU(INV) 7, and are different to those for ISD firms. These are set out in other parts of the Handbook, as listed in COLLG 5.1.7G.~~
- (3) ~~For depositaries, the~~ The Directive states ~~they~~ that the depositary must be subject to 'Public public control' and provide 'sufficient financial and professional guarantees'. ~~Depositaries are~~ The depositary is responsible for the safe keeping of a *scheme's* assets, and for ensuring that the issue, sales sale, redemptions redemption, and cancellation and issue of units and calculation of the value of units are effected in accordance with the law and *rules* of the *scheme*.
- (4) Two principal *rules* govern the relationship between a ~~management company~~ the UCITS management company and the ~~depositary~~ depositary of a ~~scheme~~ scheme. ~~Firstly~~ First, no single company may act in both capacities. ~~Secondly~~ Second, they must act independently of each other and, apart from management of a *UCITS scheme*, a *UCITS management company* cannot engage in any activities other than:
- (a) management of other *collective investment schemes*;
 - (b) *managing investments*; and
 - (c) *advising on investments* and carrying out safeguarding and ~~administering~~ administration of collective investment scheme units, but in either case only where it also has *permission to manage investments*.

2.1.4 G [not used]

Investment and borrowing ~~power~~ powers and limits

- 2.1.5 G (1) The Directive states the types of assets a *scheme* can invest in. These are:
- (a) *transferable securities*;

- (b) ~~money market investments~~ approved money-market instruments;
- (c) *deposits*;
- (d) *derivatives* and forwards; and
- (e) *units* in other *collective investment schemes*.

(1A) The UCITS eligible assets Directive, which came into effect in July 2008, clarifies the definition of terms used in the Directive by setting out criteria for determining which types of transferable securities, approved money-market instruments and derivatives are eligible to be held by a UCITS scheme.

(2) Within this range of investment assets there are some detailed spread and concentration rules. The main requirements can be summarised as:

- (a) no more than 5% in *transferable securities* or ~~money market instruments~~ approved money-market instruments with one issuer. This – this can be raised to 10% but only in respect of a maximum of 40% of the *scheme* value;
- (b) no more than 20% in *deposits* with one body;
- (c) 100% may be invested in other *schemes* provided:
 - (i) they meet the requirements of the ~~UCITS Directive~~ Directive, otherwise there is a limit of 30% in *schemes* offering equivalent protection to investors; and
 - (ii) no more than 20% may be invested in any one *scheme*, provided the *scheme* being invested into limits investment in other *schemes* (by way of a provision in its ~~instruments constituting the scheme~~ instrument constituting the scheme) to no more than 10% of its value;
- (d) no more than 20% in *transferable securities* and ~~money market instruments~~ approved money-market instruments within one group;
- (e) no more than 20% with a single body from any combination of *transferable securities* or ~~money market instruments~~ approved money-market instruments, *deposits*, or *OTC derivatives*; and
- (f) no more than 5% *OTC derivative* exposure to one counterparty, or 10% where the counterparty is an ~~EEA credit institution or is subject to equivalent prudential supervision~~ approved bank.

- (3) Where a *scheme* has the investment objective of replicating the composition of a qualifying index, it may have an exposure of up to 20% in any *issuer* or exceptionally up to 35% (but only for one ~~issuer~~ issuer). A qualifying index is one which has a sufficiently diversified composition, is a representative benchmark for that market, and is published in an appropriate manner.
- (4) ~~Where *derivatives* are to be used within a *scheme*, The *authorised fund manager* must employ a specific risk management system must be employed by the *scheme operator* process to monitor the risk of all *derivative* investment positions. Details~~ Where *derivatives* are to be used within a *scheme*, the *authorised fund manager* must notify details of this risk management system process and any significant change to it must be sent to the FSA by the *authorised fund manager*. The exposure to all *derivative* transactions must not exceed the current net asset value of the *scheme*. The underlying assets representing any *derivative* position must be taken into account in applying the spread of limits above. This does not apply in the case of any *derivative* which is on a qualifying index.
- (5) A *scheme* may borrow up to 10% in value of its assets, provided the borrowing is on a temporary basis.

Information for investors

- 2.1.6 G (1) The Directive sets out which *documents* must be made available or offered to investors. The three main documentary requirements are:
- (a) the full *prospectus*;
 - (b) the ~~simplified prospectus~~ *simplified prospectus*; and
 - (c) ~~report~~ the annual and half-yearly reports and accounts.
- (2) The full *prospectus* requirements are ~~covered~~ included in Annex A of the Directive and provide detailed information on the main parties involved in operating the *scheme*, the investment objectives and policy of the ~~scheme~~ *scheme*, and general day-to-day operating matters such as dealing times and income allocation.

- (3) In addition to the full *prospectus*, the management company must publish a marketing document (the "~~simplified prospectus~~") *simplified prospectus*. This is intended to be a standardised document used for selling *schemes* that meet the requirements of the *UCITS Directive* throughout the *EEA*. It must be offered to any prospective investor free of charge before the conclusion of any contract for the purchase of *units* in that *the scheme*. Most of the required contents for the ~~simplified prospectus~~ *simplified prospectus* are set out in Schedule C of the Directive. A Recommendation (2004/384/EC) was issued in 2004 by the European Commission in relation to those requirements. ~~Schedule C sets maximum rather than minimum requirements and is intended to provide a standardised document to be used for selling schemes that meet the requirements of the UCITS Directive throughout the EEA.~~
- (4) ~~Report~~ *Reports* and accounts must be prepared on a half-yearly and annual basis and the latest report must be supplied to investors free of charge on request. They must also be available at the places specified in the full and ~~simplified prospectus~~ *simplified prospectuses*. The required contents for the report and accounts are set out in Schedule B of the Directive.

The management company passport

- 2.1.7 G (1) Section III of the ~~UCITS Directive~~ Directive provides the framework for a ~~management company~~ *UCITS management company* to provide services in another EEA State by way of a *branch* or *cross border services* ~~in another EEA state~~.
- (2) *UK firms* which are *UCITS management companies* can operate in other *EEA states* ~~similar~~ similarly to *ISD MiFID firms*. *SUP 13* ~~will be of particular relevance and~~ explains the process such *firms* need to follow to ~~provide~~ begin providing services in other *EEA states*.
- (3) ~~Non~~ A non-UK management ~~companies are~~ company is defined in the *Handbook* as an EEA UCITS management companies company. ~~The manager~~ It will be a *UCITS qualifier*, and so be an *authorised person* under Schedule 5 to the *Act*, if it only carries out *scheme management activity* and activity in connection with the operation of the *scheme* ~~only~~. If the *manager* of such a *scheme* wishes to undertake the *passport activities* of *managing investment investments* (other than of a *collective investment scheme schemes*), ~~investment advice~~ advising on investments, or ~~safekeeping and administration of investments~~ safeguarding and administering investments, as provided by ~~article~~ Article 5(3) of the ~~UCITS Directive~~ *Directive*, as well as *scheme management activity*, it will need to do so in accordance with an authorisation conferred by Schedule 3 to the *Act* and should refer to the procedures in *SUP 13A* and *SUP 14* accordingly.

Marketing requirements (for UK firms)

- 2.1.8 G (1) Section VIII of the ~~UCITS Directive~~ Directive provides the framework for a *UCITS scheme* to undertake *marketing* in another *EEA State*. A *UCITS scheme* is required to comply with the *marketing* and advertising rules in the relevant *Host State* (Article 44). ~~And~~ and is also required to maintain facilities in the *Host State* (Article 45). The European Commission issued an Interpretative Communication in 2007 (COM (2007) 112) clarifying the respective powers of the Home State and Host State regulators in relation to marketing of UCITS schemes.
- (2) Certain *documents* must be provided to the ~~overseas~~ Host State regulator in the relevant *EEA State*. ~~The documents have to be provided~~ at the same time as notification of the proposal to market there. The *UCITS scheme* may begin *marketing* two months following notification (Article 46) unless the *Host State regulator* objects within that period.
- (3) The relevant information and *documents* distributed in the *Host State* are required to be the same as those that the *UCITS scheme* provides in its *Home State*. The *documents* must be published in an official language of the *Host State* or another language if approved by the relevant ~~overseas~~ Host State regulator (Article 47). So, *COLL* 4.2 (Pre-sale notifications) and *COLL* 4.5 (Report and accounts) will apply.
- (4) ~~If the UCITS scheme is being marketed in another EEA State, the~~ The publication of *prices* in the *Host State* is also required (Article 34). *COLL* 6.3.11R (Publication of prices) will be applicable in this case.

3 The FSA's responsibilities under the Act

3.1 Introduction

- 3.1.1 G Part XVII of the *Act* deals specifically with ~~CISs~~ collective investment schemes. The main features and practical effects of Part XVII, and how the FSA exercises its responsibilities, are described below. References to sections are to the numbered sections of Part XVII.

Marketing of schemes in the UK (section 238)

- 3.1.2 G (1) Before a *scheme* can be promoted to the public in the UK, it must be authorised or recognised by the FSA (see COLLG 1.1.3G (What are regulated collective investment schemes?)).
- (2) Only *persons* authorised under the *Act* can ~~market~~ market authorised or *recognised schemes* to the public.

Application for authorisation (~~section~~ sections 242 and 243)

- 3.1.3 G (1) ~~Applications~~ The FSA requires an application for authorisation of a ~~UK~~ unit trust scheme, ~~need to be made jointly~~ by the *manager* and *trustee*, who ~~need to~~ must be:
- (a) ~~be persons authorised~~ persons under the *Act* with a ~~Part IV permission to act as manager and trustee~~ respectively the appropriate Part IV permissions; and
 - (b) ~~submit a joint application giving details of themselves and the scheme; independent of each other~~ (see COLL 6.9 (Ongoing obligations) which provides guidance on independence).
 - (c) ~~be independent of each other~~ (see COLL 6.9 (Ongoing obligations) which provides guidance on independence); [deleted]
 - (d) ~~provide a copy of the trust deed~~; [deleted]
 - (e) ~~a business plan~~; [deleted]
 - (f) ~~provide a solicitor's certificate stating that the trust deed complies with the rules made under section 247 of the Act (trust scheme rules); and~~ [deleted]
 - (g) ~~submit a copy of the prospectus and simplified prospectus~~. [deleted]

- (2) ~~The name of the *scheme* must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect). *COLL 6.9* (ongoing obligations) provides *guidance on misleading names*. The application must contain details of the *manager* and *trustee*, of the *scheme* itself, and of other *persons* to whom functions are to be delegated (e.g. the *registrar* and the *investment adviser*).~~
- (3) Application forms are available free of charge from the *FSA*'s website at <http://www.fsa.gov.uk/pages/Library/Communication/Forms/handbook/cis.shtml>. An application *fee* is payable (see *FEES 1*, *FEES 2*, and *FEES 3*).
- (4) Under section 244 of the *Act* (Determination of applications), the *FSA* has up to *6 months* in which to consider a completed application following its receipt and must inform the *manager* and *trustee* of its decision within that timescale. In practice, the *FSA* aim to process a completed application relating to a *UCITS scheme* within 6 weeks. If the *FSA* is satisfied with the application, an *authorisation order* is issued for the *scheme*. A *fee* is payable and must be submitted with the application (see *FEES 1*, *FEES 2* and *FEES 3*).
- (5) If the *FSA* propose to refuse an application, it must give a warning notice which will contain the reasons for the refusal. If, having given the *warning notice*, it decides to re-use the application, a decision notice will be sent and the applicant may refer the matter to the *Tribunal*. The following items must be provided with the application:
- (a) a copy of the *trust deed*;
 - (b) a solicitor's certificate stating that the *trust deed* complies with the *rules* made under section 247 of the *Act* (Trust scheme rules);
 - (c) a copy of the *prospectus*, with a checklist indicating the location of the information required by *COLL* to be contained in it;
 - (d) in the case of a *UCITS scheme*, a copy of the *simplified prospectus*; and
 - (e) if applicable, documents evidencing any guarantee arrangement.
- (6) The name of the *scheme* must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect. *COLL 6.9* (ongoing obligations) provides *guidance* on what the *FSA* considers undesirable or misleading names.

Determining and refusing applications (sections 244 and 245)

- 3.1.3A G (1) Under section 244 of the Act (Determination of applications), the FSA has up to 6 months in which to consider a completed application following its receipt and must inform the manager and trustee of its decision within that timescale. In practice, the FSA aims to process 75% of completed applications relating to a UCITS scheme within 6 weeks. If the FSA is satisfied with the application, an authorisation order is issued for the scheme.
- (2) If the FSA proposes to refuse an application, it must give a warning notice which will contain the reasons for the refusal. If, having given the warning notice, it decides to refuse the application, a decision notice will be sent and the applicant may refer the matter to the Tribunal.

Revocation of authorisation (section 254)

- 3.1.4 G (1) The FSA can revoke an *authorisation order* declaring a *unit trust scheme* to be authorised if:
- (a) the requirements of authorisation are no longer satisfied; or
 - (b) the *manager* or *trustee* has contravened any provision of the *Act* or any *rules* or regulations made under it, or has given false or misleading information to the *FSA*; or
 - (c) no *regulated activity* is being carried on in relation to the *scheme* and the period of that inactivity began at least twelve *months* earlier; or
 - (d) it is undesirable for investors or potential investors that the *unit trust continues; scheme should continue.*
- (2) The *FSA* may refuse to revoke an *authorisation order* if it considers that:
- (a) ~~that~~ any matter should be investigated prior to revocation;
 - (b) ~~that~~ revocation would not be in the interests of investors; or
 - (c) ~~that~~ revocation would be incompatible with the *UCITS Directive*.
- (3) If the *FSA* proposes to revoke an *authorisation order*, a separate *warning notice* will be sent to the *manager* and *trustee*. The same procedures as stated for refusal of authorisation, in relation to the *warning notices notice* and *decision notices notice*, will apply.

Notification of changes to unit trusts (section 251)

- 3.1.5 G (1) The *manager* must give written notice to the *FSA* when:

- (a) an alteration to the *unit trust scheme* is proposed; ~~and or~~
 - (b) it is proposed that the trustee retires should retire and be replaced.
- (2) Any proposal that involves a change in the *trust deed* must be accompanied by a solicitor's certificate stating that the change will not affect the compliance of the deed with the *rules*.
 - (3) The *trustee* must give written notice to the *FSA* of a proposal to replace the *manager*.
 - (4) The *FSA* has one *month* following receipt of notice to consider whether or not to refuse the proposal.

Powers of intervention (~~section~~ sections 257 and section 281)

- 3.1.6 G The *FSA* has powers of intervention if there is a breach of the *Act* or *COLL*, or if it is in the ~~interest~~ interests of *unitholders* or potential *unitholders* in a *scheme*. In respect of an *AUT*, directions can be made for the *manager* to suspend the *issue* and *redemption* of *units* or to wind up the scheme.

Scheme particulars (section 248)

- 3.1.7 G The *Act* empowers the *FSA* to require a *manager* to publish *scheme particulars*. ~~Details relating to the timing of publication, how and when they must be offered to prospective investors, and their content is contained in~~ *COLL 4* (Investor relations) which refers to the *scheme particulars* as a *prospectus*, sets out details of the required contents, the timing of publication, and how and when the prospectus must be offered to prospective investors.

Recognition of overseas schemes (~~section 264, 270 and 272~~)

- 3.1.8 G (1) Recognition by the *FSA* enables overseas *schemes* to be *marketed* to the public in the *United Kingdom*.
- (2) ~~Section 264 covers schemes constituted in another EEA State that are certified by their Home State as meeting the requirements of the UCITS Directive. The scheme becomes recognised unless, within two months of receiving written notice of the intention to market into the United Kingdom, the FSA notifies the applicant and its Home State regulator that the manner in which the invitation is to be made (to the public) does not comply with UK law. Such schemes cannot be marketed to the public in the United Kingdom before the two month period is over. COLL 9.2.2G (Information and documents to be supplied with a section 264 notification) provides specific details. [deleted]~~
- (3) ~~If there is a change in the information supplied to the FSA in accordance with COLL 9.2.1G following initial recognition, the FSA wishes to be notified of such changes and revised documents (certified as true copies) should be sent. [deleted]~~

- (4) ~~Section 270 covers schemes that are managed in and authorised under the law of a country or territory outside the United Kingdom that has been designated for this purpose by an order made by the Treasury (“the Designation Order”). These are currently Jersey, Guernsey, the Isle of Man and Bermuda. Notification forms are available, free of charge, at the FSA website and COLL 9.3 (Section 270 and 272 recognised schemes) provides further information on the documents to be supplied to the FSA. The scheme becomes recognised on the FSA’s written approval or automatically after two months from notification. It should be noted that the Treasury:~~
- ~~(a) retains responsibility for the designation of countries or territories and must be satisfied that their laws and practices relating to the authorisation and regulation of their collective investment schemes provide a level of protection at least equivalent to that provided under the Act;~~
 - ~~(b) must be content that adequate arrangements exist for co-operation between regulators in each country or territory and the FSA; and~~
 - ~~(c) may request the FSA to provide a report on the regimes of regulation in existing or prospective designated territories. [deleted]~~
- (5) ~~Section 272 covers overseas schemes that are not recognised by virtue of section 264 or section 270. The FSA may make an order declaring the scheme to be recognised if it is satisfied that the scheme will afford adequate protection (i.e. a similar level of protection to that provided under the Act) for investors and the arrangements for the scheme’s constitution and management and the powers and duties of the operator and of any trustee or depositary are also “adequate”. In deciding what is adequate, the FSA will consider the rules applicable to AUTs or ICVCs). Section 272 applications require detailed and rigorous analysis of all aspects of the scheme and the level of investor protection provided by the regime under which the scheme operates. So the FSA has 6 months in which to determine a complete application. Details of the information and documents required for a section 272 application can be found in COLL 9.3 (Section 270 and 272 recognised schemes). [deleted]~~

Recognition of schemes constituted in other EEA states (section 264)

- 3.1.8A G (1) Section 264 covers schemes constituted in another EEA State that are certified by their Home State regulator as meeting the requirements of the UCITS Directive. The scheme becomes recognised unless the FSA, within two months of receiving written notice of the intention to market into the United Kingdom, notifies the applicant and its Home State regulator that the manner in which the invitation is to be made (to the public) does not comply with UK law. Such schemes cannot be marketed to the public in the United Kingdom before the two month period is over.
- (2) If there is a change in the information supplied to the FSA in accordance with COLL 9.2 following initial recognition, the FSA wishes to be notified of such changes and revised documents (certified as true copies) should be sent.

Recognition of schemes authorised in designated territories (section 270)

- 3.1.8B G (1) Section 270 covers schemes that are managed in and authorised under the law of a country or territory outside the United Kingdom that has been designated for this purpose by an order made by the Treasury (“the Designation Order”). These are currently Jersey, Guernsey, the Isle of Man and Bermuda. It should be noted that the Treasury:
- (a) retains responsibility for the designation of countries or territories and must be satisfied that their laws and practices relating to the authorisation and regulation of their collective investment schemes provide a level of protection at least equivalent to that provided under the Act;
- (b) must be content that adequate arrangements exist for co-operation between regulators in each country or territory and the FSA; and
- (c) may request the FSA to provide a report on the regimes of regulation in existing or prospective designated territories.
- (2) Notification forms are available, free of charge, at the FSA website and COLL 9.3 (Section 270 and 272 recognised schemes) provides further information on the documents to be supplied to the FSA. The scheme becomes recognised on the FSA’s written approval, or automatically after two months from notification.

Recognition of individual overseas schemes (section 272)

- 3.1.8C G (1) Section 272 covers overseas schemes that are not recognised by virtue of section 264 or section 270. The FSA may make an order declaring the scheme to be recognised if it is satisfied that the scheme will afford adequate protection (i.e. a similar level of protection to that provided under the Act) for investors, and the arrangements for the scheme's constitution and management, and the powers and duties of the operator and of any trustee or depositary, are also "adequate". In deciding what is adequate, the FSA will consider the rules applicable to AUTs or ICVCs.
- (2) A section 272 application requires detailed and rigorous analysis of all aspects of the scheme and the level of investor protection provided by the regime under which the scheme operates, so the FSA has 6 months in which to determine a completed application. Details of the information and documents required for a section 272 application can be found in COLL 9.3 (Section 270 and 272 recognised schemes).

Subsequent notification in respect of schemes recognised under sections 270 and 272 of the Act

- 3.1.9 G (1) The FSA wishes to be informed of changes in the information supplied by the operator of a section 270 or section 272 scheme under COLL 9.3.1D.
- (2) Any revised documents sent under (1) should be certified as true copies of the originals and accompanied, where relevant, by written evidence of the approval of the overseas regulator to the change.

Refusal of approval: schemes recognised under ~~section~~ sections 270 and 272 of the Act

- 3.1.10 G The FSA's power to refuse recognition and the procedures for this are set out in section 271 of the Act for schemes recognised under section 270₂ and section 276 of the Act for schemes recognised under section 272.

Revocation of recognition of overseas schemes (section 279)

- 3.1.11 G (1) If the operator of a scheme recognised under section 264 gives written notice to the FSA under section 264(6) that it desires the scheme to no longer be recognised, then the scheme ceases to be recognised.
- (2) Under section 279, the FSA may direct that a ~~scheme~~ scheme shall cease to be recognised under section 270, or revoke its recognition under section 272, on similar grounds to those provided for in the revocation of authorised funds under section 254.

- (3) If the ~~FSA proposes~~ FSA proposes to give a direction under section 279 or to revoke a *scheme's* recognition, it will give a *warning notice*. Should the *FSA* decide to give a direction or revoke recognition, it will issue a *decision notice*. Thereafter, the matter may be referred to the *Tribunal*.

Scheme facilities in the ~~UK~~ United Kingdom (section 283)

- 3.1.12 G This section enables the *FSA* to make *rules* requiring recognised *schemes* to maintain *scheme* facilities in the *United Kingdom* and to provide certain information to be supplied on request. Details are contained in *COLL 9.4* (Facilities in the United Kingdom).

4 The FSA's Responsibilities under the OEIC Regulations

4.1 Introduction

- 4.1.1 G Section 262 of the *Act* provides for the Treasury to make regulations governing the establishment and regulation of *ICVCs*. Rather than merely adopting various parts of *UK* company law, the Treasury chose a 'stand alone' approach for its *OEIC Regulations*. The main features and practical effects of those regulations are outlined below.

Applications for authorisation (Regulations 12 - 17)

- 4.1.2 G (1) The *FSA* requires an application for authorisation of an *ICVC* to be made jointly by the *ACD* and ~~*Depositary*~~ *depositary*, who must be:
- (a) ~~be persons authorised~~ authorised persons under the *Act* with the appropriate ~~permission under Part IV of the Act (Permission to carry on regulated activities)~~ *Part IV permissions*; and
 - (b) ~~submit a joint application giving details of themselves, and any other person proposed as a director of the *ICVC*; independent of each other.~~
 - (c) ~~be independent of each other;~~ [deleted]
 - (d) ~~provide a copy of the proposed *ICVC*'s instrument of incorporation;~~ [deleted]
 - (e) ~~a business plan;~~ [deleted]
 - (f) ~~provide a solicitor's certificate to the effect that the instrument of incorporation complies with Schedule 2 to the *OEIC Regulations* and with *COLL*;~~ [deleted]
 - (g) ~~submit a copy of the *prospectus* and simplified *prospectus*.~~ [deleted]
- (2) ~~The name of the *ICVC* must not be undesirable or misleading and must not be the same as an existing company. Regulation 19 includes a list of words and expressions that are prohibited from inclusion within the name of an *ICVC* and further guidance can be found in *COLL* 6.9 (Ongoing obligations). As with *AUTs*, the aim of the *ICVC* must be reasonably capable of being achieved. The application must contain details of the *ACD* and *depositary*, and any other person proposed as a director of the *ICVC*, of the scheme itself, and of other persons to whom functions are to be delegated (e.g. the registrar and the investment adviser).~~

- (3) As with AUTs, the FSA has up to 6 months to determine a completed application, but aims to process an application within 6 weeks for UCITS schemes. If the FSA is satisfied with the application, an authorisation order is issued. The ICVC becomes incorporated when the authorisation order is issued. Application forms are available free of charge from the FSA's website at
- <http://www.fsa.gov.uk/pages/Library/Communication/Forms/handbook/cis.shtml>
- (4) A fee is payable and must be submitted with the application (see FEES 1, FEES 2 and FEES 3).
- (5) The following items must be provided with the application :
- (a) a copy of the proposed ICVC's instrument of incorporation;
 - (b) a solicitor's certificate stating that the instrument of incorporation complies with Schedule 2 to the OEIC Regulations and with COLL;
 - (c) a copy of the prospectus, with a checklist indicating the location of the information required by COLL to be contained in it;
 - (d) in the case of a UCITS scheme, a copy of the simplified prospectus; and
 - (e) if applicable, documents evidencing any guarantee arrangement.
- (6) The name of the ICVC must not be undesirable or misleading and must not be the same as that of an existing company. Regulation 19 includes a list of words and expressions that are prohibited from inclusion within the name of an ICVC and further guidance can be found in COLL 6.9 (Ongoing obligations). As with an AUT, the aim of the ICVC must be reasonably capable of being achieved.
- (7) As with an AUT, the FSA has up to 6 months to determine a completed application, but aims to process 75% of applications for UCITS schemes within six weeks. If the FSA is satisfied with the application, an authorisation order is issued. The ICVC becomes incorporated when the authorisation order is issued.

Notification of changes to ICVCs (Regulation 21)

- 4.1.3 G (1) The FSA's approval is required before the following changes can take place:
- (a) any alteration to the instrument of incorporation;

- (b) any significant alteration to the *prospectus* ~~that would be of significance~~;
 - (c) any reconstruction or amalgamation involving the *ICVC*;
 - (d) any proposal to wind up the *ICVC* otherwise than by the court;
 - (e) any proposal to replace a *director*, ~~to~~ appoint an additional *director*, or decrease the number of *directors* in post; and
 - (f) any proposal to replace the *depository*.
- (2) Any notice proposing to change the *instrument of incorporation* must be accompanied by a solicitor's certificate confirming that the change will not affect compliance of the instrument with ~~schedule~~ Schedule 2 to the *OEIC Regulations* and ~~COLL~~ COLL as they relate to the contents of the instrument.
- (3) The *FSA* has 1 *month* following written notification to consider whether or not to refuse the proposal.

Revocation of authorisation (Regulation 23)

- 4.1.4 G The *FSA* can revoke ~~an authorisation order~~ or refuse to revoke an *authorisation order* on similar grounds to those for an *AUT*. If it proposes to do so, similar procedures for *warning notices* and ~~decision notice notices~~ decision notices as for *AUTs* apply (see COLLG 3.1.4(2)G).

Power of intervention (Regulation 25)

- 4.1.5 G The *FSA* has a power of intervention if it appears there is a breach of the *Act* or *COLL*, or if it is desirable to give a direction to protect the interests of investors in the *ICVC*. Directions can be given to cease the *issue* or *redemption* of *units* or any ~~class~~ class of *unit* in the *ICVC* or for the winding up of the *ICVC*.

Corporate Code

- 4.1.6 G (1) Certain provisions of the Companies Acts will apply to *ICVCs*, as they are incorporated bodies (especially, but not exclusively, regarding the holding of meetings).
- (2) Regulations 34 to 70 lay down the corporate code for *ICVCs*. The code contains provisions dealing with the operation of *ICVCs* and includes a number of general company law provisions, for example personal liability for contracts and deeds and punishment for fraudulent trading. The operation of an *ICVC* is also governed by *COLL*.

The FSA's ~~Registration Function~~ registration function

- 4.1.7 G In accordance with Part IV of the *OEIC Regulations*, the *FSA* is required to maintain a register of *ICVCs*, allocate to each a registered number, and carry out certain other registration functions, ~~including publication in the London or Edinburgh Gazette of the issue or receipt by the *FSA* of those documents as listed in regulation 78.~~

5 The COLL sourcebook

5.1 Introduction

- 5.1.1 G (1) *COLL* is a specialist sourcebook that sits in Block 56 (specialist sourcebooks) of the *FSA Handbook*. It provides the detailed framework within which *authorised funds* operate and includes requirements relating to what certain overseas *schemes* must provide by way of facilities in order to become recognised schemes.
- (2) ~~Until 13 February 2007, *COLL* is optional for any person seeking authorisation of a *scheme*, as they may apply for authorisation of the *scheme* under the Collective Investment Schemes sourcebook (*CIS*). *CIS* will cease to apply after 13 February 2007 and *firms* already operating *schemes* under *CIS* will need to comply with *COLL* by that date. The material in chapters 2 to 8 of *COLL* forms a major part of the product regulation regime for *ICVCs* and *AUTs*, supplementing the material in the *OEIC Regulations* (for *ICVCs*) and chapter III of Part XVII of the *Act* (for *AUTs*) and giving effect to the *UCITS Directive*. This is shown in the diagram at *COLLG* 5.1.8G.~~
- (3) The sourcebook is designed as a two-tier approach, depending on whether the *authorised fund* is capable of being promoted to the general public (retail *schemes*) or is sold to sophisticated investors (*qualified investor schemes*).

The Collective Investment Schemes Sourcebook information guide Definition of terms in COLL

- 5.1.2 G Some parts of ~~this sourcebook~~ *COLL* relate only to *ICVCs* and some parts only to *AUTs*. However, most of ~~this sourcebook~~ *COLL* covers both *ICVCs* and *AUTs*. ~~So,~~ so some of the defined terms included relate equally to both *ICVCs* and *AUTs* (together defined as “*authorised funds*”). Other key examples of these terms are:
- (1) “*authorised fund manager*”, which refers to both the *ACD* of an *ICVC* and the *manager* of an *AUT*: ~~(The the~~ the term “*ACD*” is used only for an *ICVC* and the term “*manager*” is used only for an *AUT*);
- (2) “*depository*”, which, when used for an *authorised fund*, refers to both the *depository* of an *ICVC* and the *trustee* of an *AUT*;
- (3) “*unit*”, which according to the context, can refer to a “*share*” in an *ICVC*, a “*unit*” in an *AUT*, ~~or~~ and the rights or interests of *participants* in other types of *collective investment scheme*.

Outline of the content of COLL

- 5.1.3 G (-1) Retail schemes must be either UCITS schemes or non-UCITS retail schemes. A non-UCITS retail scheme is an authorised fund capable of being promoted to retail investors, and which does not fall within the scope of the UCITS Directive. The contents of COLL in relation to retail schemes are outlined below.
- (1) COLL 2 (Authorised funds fund applications) sets out the initial application requirements for *authorised funds* and the *rules* concerning notifications which need to be made to the FSA in its role as registrar of ICVCs.
 - (2) COLL 3 (Constitution) includes requirements regarding the contents of the *instrument constituting the scheme* for *authorised funds* that are retail schemes and other matters relating to their constitutional features, such as *classes of units*.
 - (3) COLL 4 (Investor relations) includes consumer-facing material relating to *authorised funds* that are retail schemes. So, material on the *prospectus*, *simplified prospectus* and reports and accounts is included in that chapter, together with *rules* relating to when *unitholders* must be notified of events and when meetings of *unitholders* are required. (The *simplified prospectus* is not required for a non-UCITS retail scheme; the equivalent disclosure requirements for such schemes are set out in COBS.)
 - (4) COLL 5 (Investment and borrowing powers) requires *authorised funds* that are retail schemes, their *authorised fund managers* and *depositories*, to comply with *rules* on the investment composition of the *scheme*. It is ~~split into three~~ divided up as follows:
 - (a) COLL 5.1 to COLL 5.3 implement the *UCITS Directive* requirements which require quality, spread and counterparty limits to be imposed on the assets of funds investing in asset classes covered by within the scope of the Directive (as set out in COLLG 2.1.4G);
 - (b) COLL 5.4 provides ~~rules~~ rules on ~~stock lending~~ stock lending;
 - (c) COLL 5.5 provides ~~rules~~ rules on holding ~~cash~~ cash and *near cash*, borrowing and lending; and
 - (d) COLL 5.6 provides risk-spreading *rules* for ~~schemes that are not UCITS schemes but are nevertheless authorised funds capable of being promoted to retail investors (non-UCITS retail schemes)~~.
 - (5) COLL 6 (Operating duties and responsibilities) contains *rules* on the day-to-day operation of *authorised funds* that are retail schemes. In particular:

- (a) *COLL 6.2 sets out ~~rules~~ rules relating to dealing in units of ~~authorised funds~~, including the issue and cancellation of units;*
 - (b) *COLL 6.3 sets out how *authorised funds* must be valued and *prices of units* calculated and published;*
 - (c) *COLL 6.4 provides requirements relating to the *register of unitholders* in an *AUT* (see the *OEIC Regulations for ICVCs*) and any plan register;*
 - (d) *COLL 6.5 sets out *rules* relating to the appointment and replacement of the *authorised fund manager* and *depository*;*
 - (e) *COLL 6.6 imposes certain powers and duties on the *authorised fund manager* and the *depository*, as described in *COLLG 1.1.6G*;*
 - (f) *COLL 6.7 lays down conditions concerning charges and expenses that may be taken when investors buy or sell *units*, and ~~when such~~ what payments are may be made out of the *scheme property*;*
 - (g) *COLL 6.8 provides *rules* and *guidance* on the calculation and distribution of income; and*
 - (h) *COLL 6.9 gives ~~guidance~~ guidance relating to ongoing obligations imposed by the *Act*.*
- (6) *COLL 7 (Suspension of dealings and termination of authorised funds) includes the requirements for suspension of ~~dealing~~ dealing in the *units* of *authorised funds* and how they may be wound up (including termination of *sub-funds*).*
- (7) ~~*COLL 8 (Qualified investor schemes) provides requirements for *authorised funds* which cannot be promoted to retail investors. [deleted]*~~
- (8) ~~*COLL 9 (Recognised schemes) includes *rules* and *guidance* on notification procedures for *recognised schemes*. [deleted]*~~
- (9) ~~*FEES 1, FEES 2, FEES 3 and FEES 4 set out the application and periodic fees payable. [deleted]*~~

Qualified investor schemes

- 5.1.3A G (1) If subscription to a *scheme* is to be restricted to certain prescribed categories of investor (principally *professional clients* and sophisticated investors), the *FSA* considers that not all the detailed product rule protections that apply to retail *schemes* are necessary. So, *COLL* provides a framework of *rules* for such a *scheme*, called a “*qualified investor scheme*”, which satisfies the essential features of an authorised product and so distinguishes it from *unregulated collective investment schemes*, but otherwise allows more flexibility in its operation compared to the framework for retail *schemes*.
- (2) *COLL 2* is relevant for achieving authorisation. *COLL 8* provides the framework mentioned in (1) and, compared to retail *schemes*, places more emphasis on the contents of the *prospectus* to describe the operating procedures.

Recognised schemes

- 5.1.3B G For *collective investment schemes* constituted outside the *United Kingdom* (referred to in *COLLG 3.1.9G* to *3.1.12G*), *COLL 9* brings together the material relating to the admission to *marketing* of such *schemes* in the *United Kingdom*, supplementing material in chapter V of Part XVII of the *Act* (Recognised overseas schemes).

Related Sourcebooks

- 5.1.4 G (1) ~~Establishing, operating or winding up a collective investment scheme constitutes a *regulated activity*. No person may carry on a *regulated activity* by way of business in the *United Kingdom*, or purport to do so, unless he is an *authorised person* (or an *exempt person*). This prohibition is referred to in the *Act* as the *general prohibition*. *Guidance* for persons considering carrying on *regulated activities* in the *United Kingdom* can be found in *PERG*. The *FSA* website “How do I get authorised” gives *guidance* on how to apply to the *FSA* for a *Part IV permission*. This *authorisation* is different to the authorisation of an *AUT* under Part XVII of the *Act*, or of an *ICVC* (for which see Schedule 5 of the *Act* and Regulation 14 of the *OEIC Regulations* (Authorisation), *guidance* on which is provided in this guide and *COLL*. There are a number of other parts of the *FSA's Handbook* that are particularly relevant to those having a responsibility in relation to *authorised funds*. These include:~~
- (a) *PRIN* (The Principles for Businesses);
 - (b) *SYSC* (Senior Management Arrangements, Systems and Controls);
 - (c) *APER* (The Statements of Principle and Code of Practice for

Approved Persons);

- (d) FEES (the Fees manual), which includes details of the application and periodic fees payable for authorised funds and recognised schemes;
- (e) COBS (the Conduct of Business sourcebook);
- (f) CASS (the Client Assets sourcebook);
- (g) SUP (the Supervision manual); and
- (h) DEPP (the Decision Procedure and Penalties manual).

(2) ~~There are a number of other parts of the FSA's Handbook that are particularly relevant to those having a responsibility in relation to authorised funds. These include:~~

- ~~(a) PRIN (The Principles for Businesses);~~
- ~~(b) SYSC (Senior Management Arrangements, Systems and Controls);~~
- ~~(c) APER (The Statements of Principle and Code of Practice for Approved Persons);~~
- ~~(d) COB (The Conduct of Business sourcebook);~~
- ~~(e) SUP (The Supervision manual); and~~
- ~~(f) DEPP (The Decision Procedure and Penalties Manual);~~
- ~~(g) CASS (The Client Assets sourcebook).~~

UPRU (The Prudential sourcebook for UCITS firms) sets out the financial resources requirements for an authorised fund manager of a UCITS scheme where that manager is undertaking only scheme management activity and ancillary activities. BIPRU (The Prudential sourcebook for Banks, Building Societies and Investment Firms) applies equivalent requirements to the authorised fund manager of a UCITS scheme where that manager is a UCITS investment firm. Both sourcebooks include certain requirements of the UCITS Directive.

(3) In addition to the listed sourcebooks, Regulatory Guides may also be of relevance. For example EG 14 sets out the FSA's policies and procedures concerning the use of its enforcement powers in relation to *regulated collective investment schemes*.

Function of the sourcebook: the two-tier regime

- 5.1.5 G (1) The material in chapters 2 to 8 of *COLL* forms a major part of the product regulation regime for *ICVCs* and *AUTs*, supplementing the material in the *OEIC Regulations* (for *ICVCs*) and chapter III of Part XVII of the *Act* (for *AUTs*) and giving effect to the *UCITS Directive*. This is shown in the diagram at *COLLG 5.1.7G*. [deleted]
- (2) The sourcebook is designed as a two-tier approach depending on whether the *authorised scheme* is promoted to the general public (retail *schemes*) or to institutions and expert *private customers* (*qualified investor schemes*). [deleted]

Retail schemes

- 5.1.6 G Retail *schemes* must be either *UCITS schemes* or *non-UCITS retail schemes* and *COLL* provides material relating to:
- (1) matters relating to authorisation and notification (*COLL 2*);
 - (2) the constitution (*COLL 3*), investment powers (*COLL 5*) and general management (*COLL 6*) of *schemes* and the arrangements for investor notification and participation (*COLL 4*);
 - (3) how an *authorised fund* or *sub-fund* may suspend *dealing in units* or be wound up (*COLL 7*); and
 - (4) *fees payable in respect of them* (*FEES 1, FEES 2, FEES 3* and *FEES 4*). [deleted]

Qualified investor schemes

- 5.1.7 G (1) If a *scheme* is to be restricted in its promotion or subscription to sophisticated investors, the *FSA* considers that not all the detailed product *rule* protections that apply to retail *schemes* are necessary. So, the sourcebook provides a framework of *rules* for such *schemes* which satisfies the essential features of an authorised product and so distinguishes them from *unregulated collective investment schemes*, but otherwise allows more flexibility in the *scheme's* operation compared to the framework provided for retail *schemes*. [deleted]
- (2) *COLL 2* is relevant for achieving authorisation. *COLL 8* provides the framework mentioned in (1) and, compared to retail *schemes*, places more emphasis on the contents of the *prospectus* to describe the operating procedures. [deleted]

Recognised schemes

- 5.1.8 G For *collective investment schemes* constituted outside the *United Kingdom* and referred to in *COLLG 1.1.3G (2)* the sourcebook brings together the material relating to the admission to *marketing* of such *schemes* in the *United Kingdom*, supplementing material in Chapter V of Part XVII of the *Act*

~~(Recognised overseas schemes). This material can be found at *COLL 9* and *FEES 1, FEES 2, FEES 3* and *FEES 4*. [deleted]~~

Regulated schemes: explanatory diagram

- 5.1.9 G This diagram provides a general description of the products covered by *COLL* and the relevant legislation and sections of *COLL*.

