

**NEW COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(AMENDMENT) INSTRUMENT 2007**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157 (1) (Guidance); and
 - (d) section 247 (Trust scheme rules); and
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2007.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The New Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Amendments to FSA Instruments

- F. The Annex to the Glossary (MiFID) Instrument 2007 (FSA 2007/1) is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the New Collective Investment Schemes Sourcebook (Amendment) Instrument 2007.

By order of the Board
22 February 2007

Annex A

Amendments to the Glossary of definitions

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

Amend the following definition as shown:

accumulation unit a *unit* in respect of which income is credited periodically to ~~capital under CIS 9.2.4R (Annual allocation to accumulation shares or accumulation units) or CIS 9.2.6R (Interim allocations of income).~~ capital property under COLL 6.8.3R (Income allocation and distribution).

geared scheme ~~a regulated collective investment scheme where the policies which the operator adopts or proposes to adopt mean that as a result of investment in warrants or derivatives, or through borrowing that is not temporary in nature, movements in prices of units are likely to be amplified significantly.~~

higher volatility fund ~~a regulated collective investment scheme which is:~~
(a) ~~a geared futures and options scheme, a geared scheme, or a warrant scheme;~~
(b) ~~a fund of funds scheme of which one or more of the schemes to which it is dedicated falls within (a); or~~
(c) ~~an umbrella scheme, a sub-fund of which, if it were a separate fund, would fall within (a).~~

- (a) a regulated collective investment scheme which is:
- (i) a scheme where the investment policies which the operator adopts, or proposes to adopt, mean that, as a result of making investments in warrants or derivatives, or through borrowing that is not temporary in nature, movements in the price of units are likely to be significantly amplified; or
 - (ii) an umbrella with a sub-fund that would fall within (i) if that sub-fund were a separate scheme; or
- (b) an authorised fund dedicated to units in:
- (i) a number of regulated collective investment schemes; or
 - (ii) sub-funds of one or more umbrellas that are regulated collective investment schemes;
- any one of which falls within (a).

qualifying money market fund (1) (in COLL and CASS 7) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions:

- (a) its primary investment objective must be to maintain the net

asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;

- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
- (c) it must provide liquidity through same day or next day settlement.

(2) For the purposes of (1)(b), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.

(3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.

[Note: article 18(2) of the *MiFID implementing Directive*]

*permitted
immovable*

any ~~immovable~~ interest in land or buildings which falls within ~~CIS 5A.8.4R (Permitted immovable)~~ COLL 5.6.18R(2) and (6) (Investment in property) and which, being a leasehold interest or its equivalent, has an unexpired term of at least 20 years, but (excluding, in relation to an ICVC, immovable property that is necessary for the direct pursuit of its business).

sell

(in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*) (in relation to any *investment*) sell in any way, including disposing of the *investment* for valuable consideration; in this definition, "disposing" includes:

- (a) (in relation to an *investment* consisting of rights under a contract):
 - (i) surrendering, assigning or converting those rights; or
 - (ii) assuming the corresponding liabilities under the contract;
- (b) (in relation to an *investment* consisting of rights under other arrangements) assuming the corresponding liabilities under the arrangements; and
- (c) (except in ~~CIS COLL~~) (in relation to any other *investment*) issuing or creating the *investment* or granting the rights or interests of which it consists.

- share*
- (1) (except in ~~€IS~~, COLL, *LR* and *DR*) the *investment*, specified in article 76 of the *Regulated Activities Order* (Shares etc), which is in summary: a share or stock in the share capital of:
- (a) any *body corporate* (wherever incorporated);
- (b) any unincorporated body constituted under the law of a country or territory outside the *United Kingdom*.
- (2) (in ~~€IS~~ COLL):
- (a) in relation to an *ICVC*) a *share* in the *ICVC* (including both *smaller denomination shares* and *larger denomination shares*);
- (b) (otherwise) an *investment* within (1).
- ...
- sub-fund*
- (a) (in relation to an *authorised fund* that is an *umbrella scheme*) a separate part of the *scheme property* of that *scheme* that is pooled separately;
- (b) (in relation to a *collective investment scheme* that is not an *authorised fund*) any part of that *scheme* that is equivalent to ~~a *sub-fund* of an *umbrella scheme*~~(a).
- UCITS scheme*
- ~~an *authorised fund*:~~
- (a) an *authorised fund* whose *instrument constituting the scheme* contains a statement that it is:
- (i) a *UCITS scheme*; or
- (ii) ~~a *UCITS scheme* that complies with CIS 5;~~
- (iii) ~~a *securities scheme*; or~~
- (iv) ~~a *warrants scheme*; or~~
- (b) ~~which is an *umbrella scheme*~~ that is a *UCITS scheme* each of whose *sub-funds* would be a *UCITS scheme*, ~~*securities scheme* or *warrants scheme*~~ if it had a separate *authorisation order*;
- unless:
- (c) the *scheme* raises capital without promoting the *sale* of its *units* to the public within the *EEA* or any part of it; or
- (d) the *scheme's units* under its *trust deed* or its *instrument constituting the scheme*, may be sold only to the public in non-EEA States
- warrant*
- (1) (except in ~~€IS~~ COLL) the *investment*, specified in article 79 of the *Regulated Activities Order* (Instruments giving entitlements to investments), which is in summary: a warrant or other instrument

entitling the holder to subscribe for a *share, debenture or government and public security*.

- (2) (in ~~€IS-COLL~~) an *investment* in (1) and any other *transferable security* (not being a nil paid or partly paid *security*) which is:
 - (i) *listed* on an *eligible securities* market; and
 - (ii) akin to an *investment* within (1) in that it involves a down payment by the then holder and a right later to surrender the instrument and to pay more *money* in return for a further *transferable security*.

Annex B

Amendments to the New Collective Investment Schemes sourcebook (COLL)

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

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Rights of unit classes

3.3.5 R ...

- (2) For an *authorised fund* which is not an *umbrella*, the *instrument constituting the scheme* must not provide for any *class of units* in respect of which:
 - (a) the extent of the rights to participate in the *capital property*, *income property* or *distribution account* would be determined differently from the extent of the corresponding rights for any other *class of units*; or
 - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class of units*.
- (3) For a scheme which is an *umbrella*, the provisions in (2)(a) apply to *classes of units* in respect of each *sub-fund* as if each *sub-fund* were a separate *scheme*.
- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class of units* and to another *class of units* that relates solely to:

...

- (c) the currency in which *prices* or values are expressed or payments made; ~~or~~
- (d) the use of *derivatives* and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a *currency class unit* and either the *base currency* of the *scheme* or any currency in which all or part of the *scheme property* is denominated or valued (in this section referred to as a “*currency class hedging transaction*”).

Hedging of currency class units

3.3.5A R A currency class hedging transaction must:

- (1) be undertaken in accordance with the requirements of *COLL 5*

(Investment and borrowing powers); and

- (2) (for the purposes of valuing *scheme property* and calculating the price of *units* in accordance with COLL 6.3 (Valuation and pricing)) be attributed only to the *currency class units* for which it is undertaken.

Guidance on hedging of currency classes

3.3.5B G (1) Before undertaking a currency class hedging transaction for a *class* of *units*, the *authorised fund manager* should:

(a) ensure that the relevant *prospectus* clearly:

(i) states that such a transaction may be undertaken for the relevant *class* of *currency class units*; and

(ii) explains the nature of the risks that such a transaction may pose to investors in all *classes*;

(b) consult the *depository* about the adequacy of the systems and controls it uses to ensure compliance with COLL 3.3.5AR (Hedging of currency class units); and

(c) consult the *scheme* auditor and, where appropriate, *depository* to determine how:

(i) the transaction will be treated in the *scheme's* accounts; and

(ii) any consequential tax liability will be met;

(in each case) without prejudice to *unitholders* of *classes* other than the relevant *currency class*.

- (2) Currency class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a *currency class unit*. The *authorised fund manager* should ensure that the total value of the hedged position does not exceed the value of the relevant *currency class units* unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the *currency class units* should not be so large as to be speculative or to constitute an investment strategy.

...

Application

5.4.1 R This section applies to an *ICVC*, the *depository* of an *authorised fund* and an *authorised fund manager* in any case where the *authorised fund* is a *UCITS*

scheme or a non-UCITS retail scheme.

- (1) ~~This section applies to a *depository* of an *authorised fund* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~
- (2) ~~*COLL 5.4.3R* (Stock lending: general) also applies to:~~
 - (a) ~~an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*; and~~
 - (b) ~~a *manager* of an *AUT* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~
- (3) ~~*COLL 5.4.4R* (Stock lending: requirements) also applies to an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*.~~

Permitted stock lending

- 5.4.3 R ~~The *stock lending* permitted by this section may be exercised by an An authorised fund when may only enter into a stock lending arrangement or repo contract in accordance with the rules in this section if it reasonably appears to the *ICVC* or ~~to the manager~~ to be appropriate to do so with a view to generating additional income for the *authorised fund* with an acceptable degree of risk.~~

...

Stock lending requirements

- 5.4.4 R (1) An *ICVC*, or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, may enter into a repo contract, or a stock lending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

...

- (b) the counterparty is:
 - (i) an authorised person; or
 - (ii) a person authorised by a Home State regulator; and or
 - (iii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
 - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC derivatives by at least one of the following federal banking supervisory authorities of the United States of

America:

(A) the Office of the Comptroller of the Currency;

(B) the Federal Deposit Insurance Corporation;

(C) the Board of Governors of the Federal Reserve System; and

(D) the Office of Thrift Supervision; and

(c) *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the *collateral* is:

(i) acceptable to the *depository*;

(ii) adequate ~~within COLL 5.4.6 R (1);~~ and

(iii) sufficiently immediate ~~within COLL 5.4.6 R (2).~~

(2) ...

(3) (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

...

Treatment of collateral

5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:

...

(c) in the form of one or more of:

...

(ii) ~~*government and public securities;*~~ or [deleted]

...

(v) *a readily realisable security;* or

(vi) *commercial paper with no embedded derivative content;* or

(vii) *a qualifying money market fund.*

(1A) Where the *collateral* is invested in *units* in a *qualifying money market fund* managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the *investing scheme* or an

associate of that authorised fund manager, the conditions in COLL 5.2.16R (Investment in other group schemes) must be complied with whether or not the investing scheme is a UCITS scheme or a non-UCITS retail scheme.

5.4.7 R There is no limit on the value of the *scheme property* which may be the subject of repo contracts or stock lending transactions within this section.

...

6.2.6 R ...

Issue and cancellation of units in multiple classes

6.2.6A R If an authorised fund 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.

...

Permitted stock lending

8.4.9 R (1) The *ICVC*, or the *depositary* at the request of the *ICVC*, or the *trustee* at the request of the *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).

...

Issues and cancellations of units

8.5.10 R ...

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*.

Annex C

Amendments to the Glossary (MiFID) Instrument 2007 (FSA 2007/1)

In this Annex, striking through indicates deleted text.

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- qualifying money market fund (1) (in CASS 7) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
 - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
 - (c) it must provide liquidity through same day or next day settlement.
- (2) For the purposes of (1)(b), a money market instrument is to be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency is not to be considered to be of high quality.
- (3) For the purposes of (2), a rating agency is to be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is an eligible ECAI within the meaning of Article 81(1) of the BCD.

[Note: article 18(2) of the MiFID implementing Directive]

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