

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 5)
INSTRUMENT 2009**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 248 (Scheme particulars rules);
 - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to 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 January 2010.

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009.

By order of the Board
10 December 2009

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

OTC transactions in derivatives

- 5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* must be:
- ...
- (2) on approved terms; the terms of the transaction in *derivatives* are approved only if, ~~before the transaction is entered into, the *depository* is satisfied that the counterparty has agreed with the *ICVC* or the *authorised fund manager*:~~
- (a) ~~to provide~~ carries out, at least daily ~~and at any other time at the request of the *ICVC* or *authorised fund manager*~~, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value ~~(being the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction)~~ and which does not rely only on market quotations by the counterparty; and
- (b) ~~that it or an alternative counterparty will, at the request of the *ICVC* or *authorised fund manager*~~, can enter into a one or more further transactions to sell, liquidate or close out that transaction at any time, at a its fair value arrived at under the reliable market value basis or pricing model agreed under (3);
- ...
- 5.2.23A R For the purposes of *COLL 5.2.23R(2)*, “fair value” is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.
- 5.2.23B R In respect of its obligations under *COLL 6.6.4R(1)(a)*, the *depository* must take reasonable care to ensure that the *authorised fund manager* has systems and controls that are adequate to ensure compliance with *COLL 5.2.23R(1) to (4)*.

...

Restrictions on lending of property other than money

- 5.5.7 R ...

- (4) Where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any of the *rules* in this chapter, ~~nothing~~ ~~Nothing~~ in this *rule* prevents the *ICVC* or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, from:
- (a) lending, depositing, pledging or charging *scheme property* for *margin* requirements; or
- (b) transferring *scheme property* under the terms of an agreement in relation to *margin* requirements, provided that the *authorised fund manager* reasonably considers that both the agreement and the *margin* arrangements made under it (including in relation to the level of *margin*) provide appropriate protection to *unitholders* ~~where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any other of the *rules* in this chapter.~~

5.5.7A G An agreement providing appropriate protection to *unitholders* for the purposes of *COLL 5.5.7R(4)(b)* includes one made in accordance with the *1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement*.

...

Prudent spread of risk

5.6.3

R

- ...
- (2) ~~The~~ Subject to (3) and (4), the *rules* in this section relating to spread of investments, including immovables, do not apply during any period in which it is not reasonably practical to comply, until 12 months after the later of:
- (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
- (b) the date the *initial offer* commenced;
- provided that (1) is complied with during such period.
- (3) Subject to (4), the limits in *COLL 5.6.19R* do not apply until 24 months after the later of:
- (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
- (b) the date the *initial offer* commenced;

provided that (1) is complied with during such period.

- (4) The limit in COLL 5.6.19R(7) relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect and the date the *initial offer period* commenced.

...

Transferable Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme

5.6.5 R *Transferable securities* and money-market instruments held within a *non-UCITS retail scheme* must:

- (1) ...
- (c) be *approved money-market instruments* not admitted to or dealt in on an *eligible* market which satisfy the requirements for investment by a *UCITS scheme* set out in *COLL 5.2.10AR(4)* to *COLL 5.2.10CR*; or

...

5.6.5A R *Transferable securities* held within a *non-UCITS retail scheme* must also satisfy the criteria in *COLL 5.2.7AR*, *COLL 5.2.7CR* and *COLL 5.2.7ER* for the purposes of investment by a *UCITS scheme*.

5.6.5B G *COLL 5.2.7AR* to *COLL 5.2.7ER* contain *rules* and *guidance* relating to the criteria that need to be satisfied for the purposes of investment in *transferable securities*.

...

Committees and delegation

6.6.15 R ...

- (5) Where a *depository* retains services under (4):
- (a) if it retains the services of a *director* of the *ICVC*, or an *associate* ~~or~~ of such a *director* or its own *associate*, or the *authorised fund manager* of a *scheme* or that *authorised fund manager's associate*, then its liability for those services shall remain unaffected; and

...

...

Transitional Provisions

TP1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
15	<u>Amendments to COLL 5.6.3R made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009</u>	R	<u>The new timing provisions in relation to the prudent spread of risk will not take effect until 6 January 2011 in relation to those <i>non-UCITS retail schemes</i> authorised as an <i>AUT</i> or an <i>ICVC</i> prior to 6 January 2010.</u>	<u>6 January 2010 to 5 January 2011</u>	<u>6 January 2010</u>