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 139(4) (Miscellaneous ancillary matters);
   (c) section 156 (General supplementary powers);
   (d) section 157(1) (Guidance);
   (e) section 247 (Trust scheme rules);
   (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 listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. The Annexes to this instrument come into force immediately.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011.

By order of the Board
21 December 2011
Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*foreign law contract* any contract other than a contract:

(a) governed by the laws of any part of the *United Kingdom*; and

(b) whose parties agree to the exclusive jurisdiction of the courts of any part of the *United Kingdom*. 
Annex B

Amendments to the Collective Investments Schemes sourcebook (COLL)

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

3.2 The instrument constituting the scheme

…

Table: contents of the instrument constituting the scheme

3.2.6 R This table belongs to COLL 3.2.4R (Matters which must be included in the instrument constituting the scheme)

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<td>22</td>
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**ICVCs: Umbrella schemes – principle of limited recourse**

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>22 A</td>
<td>For an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose.</td>
</tr>
</tbody>
</table>

…

4.2 Pre-sale notifications

…

Table: contents of the prospectus

4.2.5 R This table belongs to COLL 4.2.2R (Publishing the prospectus)

<p>| | |</p>
<table>
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<td>2</td>
<td>A description of the authorised fund including:</td>
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<tbody>
<tr>
<td>(a)</td>
<td>its name;</td>
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<tr>
<td>(b)</td>
<td>whether it is an ICVC or an AUT and that:</td>
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<tbody>
<tr>
<td>(i)</td>
<td>unitholders are not liable for the debts of the authorised fund;</td>
</tr>
</tbody>
</table>
(ii) for an ICVC, a statement that the sub-funds of a scheme which is an umbrella are not “ring-fenced” and in the event of the umbrella being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, that the remaining liabilities may have to be met out of the assets attributable to other sub-funds;

(ba) …

(bb) a statement that unitholders are not liable for the debts of the authorised fund.

…

(g)

**Umbrella ICVCs**

**2A** For an ICVC which is an umbrella, a statement that:

(a) its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose; and

(b) while the provisions of the OEIC Regulations provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations.

…

**4.5 Reports and accounts**

…

Authorised fund manager’s report

**4.5.9 R** The matters set out in (1) to (13) must be included in any authorised fund manager’s report, except where otherwise indicated:

…

(11) for a report on an umbrella prepared in accordance with COLL
4.5.7R(2) or COLL 4.5.8R(2):

(a) (for an ICVC), a statement to the effect that, as a sub-fund is not a legal entity, if the assets attributable to any sub-fund were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other sub-funds of the ICVC; and

(b) information required by (1) to (10) must be given for each sub-fund, if it would vary from that given in respect of the umbrella as a whole;

…

(13) for a report on an individual sub-fund of a scheme which is an umbrella prepared in accordance with COLL 4.5.7R(4) or COLL 4.5.8R(3):

(a) (for an ICVC) a statement corresponding to that required by (11)(a) making it clear that if the liability relates to another sub-fund of the umbrella, the shortfall or any part of it might have to be met out of the assets of the sub-fund to which the report relates; and

(b) a statement that the latest long report prepared for the umbrella as a whole is available on request.

…

5.2 General investment powers and limits for UCITS schemes

…

Investment in associated collective investment schemes

5.2.15 R (1) A UCITS scheme must not invest in or dispose of units in another collective investment scheme (the second scheme) if the second scheme is managed or operated by (or, for an ICVC, whose ACD is) the authorised fund manager of the investing UCITS scheme or an associate of that authorised fund manager, unless:

(1) (a) the prospectus of the investing UCITS scheme clearly states that the property of that investing scheme may include such units; and

(2) (b) COLL 5.2.16R (Investment in other group schemes) is complied with.

(2) Where a sub-fund of a UCITS scheme which is an umbrella invests
in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:

(a) **COLL 5.2.15R**(1)(a) is modified as follows – the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and

(b) **COLL 5.2.15R**(1)(b) is modified as follows – **COLL 5.2.16R** (Investment in other group schemes) must be complied with, modified such that references to the “UCITS scheme” are taken to be references to the investing or disposing sub-fund and references to the “second scheme” are taken to be references to the second sub-fund.

Investment in other group schemes

5.2.16  R  (1)  …

(2) When an investment is made, the amount referred to in (1)(a) is either:

(a) …

(3) When a disposal is made, the amount referred to in (1)(a) is any charge made for the account of the authorised fund manager or operator of the second scheme or an associate of any of them in respect of the disposal.

…

…

UCITS schemes that are umbrellas

5.2.30  R  (1)  …

(2) A sub-fund must not may invest in or dispose of units of another sub-fund of the same umbrella (the second sub-fund) only if the following conditions are satisfied:

(a) the second sub-fund does not hold units in any other sub-fund of the same umbrella;

(b) the conditions in **COLL 5.2.15R** (Investment in associated collective investment schemes) and **COLL 5.2.16R** (Investment in other group schemes) are complied with (for the purposes of this rule, **COLL 5.2.15R** and **COLL 5.2.16R** are to be read as modified by **COLL 5.2.15R**(2)); and

(c) the investing or disposing sub-fund must not be a feeder
5.6 Investment powers and borrowing limits for non-UCITS retail schemes

Investment in associated collective investment schemes

5.6.11 R (1) Units in a scheme do not fall within COLL 5.6.10R if that scheme is managed or operated by (or, if it is an ICVC, has as its ACD) the authorised fund manager of the investing non-UCITS retail scheme or by an associate of that authorised fund manager, unless:

(1) (a) the prospectus of the investing authorised fund clearly states that the property of that investing fund may include such units; and

(2) (b) the conditions in COLL 5.2.16R (Investment in other group schemes) are complied with.

(2) Where a sub-fund of a non-UCITS retail scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:

(a) COLL 5.6.11R(1)(a) is modified as follows – the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and

(b) COLL 5.6.11R(1)(b) is modified as follows – COLL 5.2.16R (Investment in other group schemes) must be complied with, modified such that references to the “UCITS scheme” are taken to be references to the investing or disposing sub-fund and references to the “second scheme” are taken to be references to the second sub-fund.

Non-UCITS retail schemes that are umbrellas

5.6.24 R …

(2) A sub-fund must not may invest in or dispose of units of another sub-fund of the same umbrella (the second sub-fund) only if the following conditions are satisfied:

(a) the second sub-fund does not hold units in any other sub-
fund of the same umbrella;

(b) the conditions in COLL 5.2.16R (Investment in other group schemes) and COLL 5.6.11R (Investment in associated collective investment schemes) are complied with (for the purposes of this rule, COLL 5.2.16R and COLL 5.6.11R are to be read as modified by COLL 5.6.11R(2)); and

(c) not more than 35% in value of the investing or disposing sub-fund is to consist of units of the second sub-fund.

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

... Table of application

6.6.2 R This table belongs to COLL 6.6.1R

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other directors of an ICVC</th>
<th>Depositary of an ICVC</th>
<th>Manager of an AUT</th>
<th>Trustee of an AUT</th>
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<td>6.6.5AR</td>
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<td>6.6.5BG</td>
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</table>

6.6.5 R ... Duties of the ACD of an ICVC: umbrella schemes

6.6.5A R Where reasonable grounds exist for an ACD of an ICVC which is an umbrella to consider that a foreign law contract entered into by the ICVC may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation of the ICVC (see COLL 3.2.6R(22A) (ICVCs: Umbrella schemes – principle of limited recourse)) the ACD must:

(1) promptly investigate whether there is an inconsistency; and

(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.
6.6.5B G In deciding what steps are appropriate to remedy the inconsistency, the ACD 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 to exit the foreign law contract.

7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1 G (1) …

(2) The termination of a sub-fund may be carried out under this section will be subject to the conditions set out in , instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC’s instrument of incorporation and prospectus have been notified to the FSA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

Guidance on winding up or termination

7.3.3 G This table belongs to COLL 7.3.1G(4) (Explanation of COLL 7.3)

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
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<tbody>
<tr>
<td></td>
<td>Request FSA to revoke relevant authorisation order or update its records</td>
<td>On completion of W/U or termination</td>
<td>7.3.7(9)</td>
</tr>
</tbody>
</table>

When an ICVC is to be wound up or a sub-fund terminated or wound up
7.3.4 R (1) An ICVC must not be wound up except:

(a) under this section; or

(b) as an unregistered company under Part V of the Insolvency Act 1986.

(1A) A sub-fund must not:

(a) be terminated except under this section; or

(b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the OEIC Regulations) as an unregistered company.

(2) An ICVC must not be wound up or a sub-fund terminated under this section if there is a vacancy in the position of ACD.

…

(4) …

(b) when the period (if any) fixed for the duration of the ICVC or the sub-fund by the instrument of incorporation expires or any event occurs, for which the instrument of incorporation provides that the ICVC or the sub-fund is to be wound up or terminated; or

…

Solvency statement

7.3.5 R (1) Before notice is given to the FSA under regulation 21 of the OEIC Regulations of the proposals referred to in COLL 7.3.4R(3), the directors must make a full enquiry into the ICVC’s or, in the case of termination of a sub-fund, the sub-fund’s affairs, business and property to determine whether the ICVC or the sub-fund will be able to meet all its liabilities.

(2) The ACD must then, based on the results of this enquiry, prepare a statement either:

(a) confirming that the ICVC or the sub-fund will be able to meet all its liabilities within twelve months of the date of the statement; or

…

(3) This solveney statement must:

(a) relate to the ICVC’s or the sub-fund’s affairs, business and property at a date no more than 28 days before the date on
which notice is given to the FSA;

…

…

Consequences of commencement of winding up or termination

7.3.6 R …

(3) The ACD must as soon as practicable after winding up or termination has commenced:

(a) If the ACD has not previously notified unitholders of the proposal to wind up the ICVC or terminate the sub-fund, the ACD must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the unitholders; and

(b) if winding up an ICVC that has its head office situated in Northern Ireland, publish notice of the commencement of the winding up in the Belfast Gazette.

Manner of winding up or termination

7.3.7 R (1) Paragraphs (2) to (9) of this rule apply to winding up an ICVC and termination of a sub-fund, paragraph (10) only applies to the winding up of an ICVC and paragraphs (11) to (15) only apply to the termination of a sub-fund of an ICVC. [deleted]

…

(9) The depositary must notify the FSA once the winding up of the ICVC or the termination of a sub-fund (including compliance with COLL 7.3.8R) is complete and at the same time the ACD or the depositary must request the FSA to revoke the relevant authorisation order (on the winding up of an ICVC) or to update its records (on the termination of a sub-fund of an ICVC).

(10) Where any sum of money stands to the account of the ICVC at the date of its dissolution or a sub-fund at the date of its termination, the ACD must arrange for the depositary to pay or lodge that sum within one month after that date in accordance with regulation 33(4) or (5) of the OEIC Regulations (Dissolution in other circumstances).

(11) Where any sums (including unclaimed distributions) remain standing to the account of the scheme property following tender of payment (whether to a creditor or a unitholder), the ACD must instruct the depositary to retain the sums (“tendered sums”) in an account (“unclaimed payments account”) separate from any other
part of the scheme property. [deleted]

(12) The depositary must, if instructed by the ACD, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum. [deleted]

(13) Any costs and reasonable expenses of the ACD for investigating a claim and any costs and expenses incurred by the depositary in making a payment out of the unclaimed payments account may be reimbursed from the payment. [deleted]

(14) The person entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account and any interest arising in respect of the unclaimed payments account must be allocated between the continuing sub-funds of the ICVC in a manner which is fair to the unitholders of the ICVC generally. [deleted]

(15) Amounts standing to the credit of an unclaimed payments account must be excluded from the value of the scheme property and must not be subject to any distribution under this rule, but upon a dissolution of the ICVC under regulation 33 of the OEIC Regulations, the depositary must cease to hold those amounts as part of that account and they will become subject to the provisions of (10). [deleted]

... Duty to ascertain liabilities

7.3.9 R (1) The ACD must use all reasonable endeavours to ensure that all the liabilities of the ICVC or the sub-fund are discharged before the completion of the winding up or termination.

... (3) If the ACD rejects any claim against the ICVC or the sub-fund in whole or part against the ICVC or the sub-fund in respect of a liability in whole or part, the ACD must immediately send to the claimant written notice of its reasons for doing so.

... Liabilities of the ACD

7.3.11 R (1) Except to the extent that the ACD can show that it has complied with COLL 7.3.9R (Duty to ascertain liabilities), the ACD:

(a) is personally liable to meet any liability of an ICVC or a sub-fund, of which it is the ACD, wound up or terminated under this section (whether or not the ICVC has been dissolved or, in the case of the sub-fund, termination has been completed);
(b) must keep the ICVC indemnified against any liability allocated or attributable to a sub-fund that has been terminated under these rules

that was not discharged before the completion of the winding up or termination.

Additional provisions applicable to umbrella companies

7.3.12 R (1) Liabilities of an ICVC which is an umbrella attributable, or allocated, to a particular sub-fund must be met first out of the scheme property attributable or allocated to such sub-fund.

(2) If the liabilities to be met out of a particular sub-fund of an umbrella ICVC are greater than the proceeds of the realisation of the scheme property attributable or allocated to that sub-fund, the deficit must be met out of the scheme property attributable or allocated to the solvent sub-funds of that umbrella ICVC in which the proceeds of realisation exceed liabilities and divided between those sub-funds in a manner that is fair to the unitholders in those solvent sub-funds.

(3) Paragraph (2) applies in respect of any deficit arising as a result of additional liabilities accruing to a sub-fund through the operation of (2).

(4) In calculating the amount of liabilities for the purpose of (2), account must be taken of any payments received or to be received from the ACD under COLL 7.3.11R (Liabilities of the ACD).

[deleted]

Miscellaneous

7.3.13 R (1) If:

(a) …

(b) after winding up or termination has commenced, the ACD becomes of the opinion that the ICVC or the sub-fund will be unable to meet all its liabilities within twelve months of the date of the statement provided under (a) of COLL 7.3.5R(2);

the directors must immediately present a petition or cause the ICVC or sub-fund to present a petition for the winding up of the ICVC or sub-fund as an unregistered ICVC company under Part V of the Insolvency Act 1986.

(2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or
termination has been sent to the FSA, there is a vacancy in the position of ACD

(a) the directors of the ICVC must immediately present or cause the ICVC or sub-fund to present; or

(b) if there are no directors, the depositary must immediately present;

a petition for the winding up of the ICVC or sub-fund as an unregistered ICVC company under Part V of the Insolvency Act 1986.

8 Qualified investor schemes

8.2 Constitution

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to COLL 8.2.5R

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<td>Constitution</td>
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<td>(4A)</td>
<td>for an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;</td>
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8.3 Investor relations
Table: contents of qualified investor scheme prospectus

<table>
<thead>
<tr>
<th>8.3.4 R</th>
<th>This table belongs to <strong>COLL 8.3.2R.</strong></th>
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<td><strong>17 Information on the umbrella</strong></td>
<td>In the case of a <em>scheme</em> which is an <em>umbrella</em>, the following information:</td>
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<tr>
<td>(5)</td>
<td>for an <em>ICVC</em>, that:</td>
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<td>(a)</td>
<td>the its sub-funds are not “ring-fenced” and in the event of an <em>umbrella</em> being unable to meet liabilities attributable to any particular <em>sub-fund</em> out of the assets attributable to that <em>sub-fund</em>, the remaining liabilities may have to be met out of the assets attributable to other <em>sub-funds</em>. segregated portfolios of assets and, accordingly, the assets of a <em>sub-fund</em> belong exclusively to that <em>sub-fund</em> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <em>person</em> or body, including the <em>umbrella</em>, or any other <em>sub-fund</em>, and shall not be available for any such purpose; and</td>
</tr>
<tr>
<td>(b)</td>
<td>while the provisions of the <em>OEIC Regulations</em> provide for segregated liability between <em>sub-funds</em>, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under <em>foreign law contracts</em>, it is not yet known how those foreign courts will react to regulations 11A and 11B of the <em>OEIC Regulations</em>.</td>
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**8.5 Powers and responsibilities**

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<th>8.5.3 R</th>
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<tbody>
<tr>
<td><strong>Duties of the ACD: umbrella schemes</strong></td>
<td></td>
</tr>
<tr>
<td><strong>8.5.3A R</strong></td>
<td>Where reasonable grounds exist for an <em>ACD</em> of an <em>ICVC</em> which is an <em>umbrella</em> to consider that a <em>foreign law contract</em> entered into by the <em>ICVC</em> may have become inconsistent with the principle of limited recourse stated</td>
</tr>
</tbody>
</table>
in the instrument of incorporation of the ICVC (see COLL 8.2.6R(2)(4A)) the ACD must:

(1) promptly investigate whether there is an inconsistency; and
(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

8.5.3B G In deciding what steps are appropriate to remedy the inconsistency, the ACD 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 to exit the foreign law contract.

TP 1 Transitional Provisions

COLL TP 1.1

<table>
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<tr>
<th>(1)</th>
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<tr>
<td>(Material to which the transitional provision applies)</td>
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<td>(Transitional provision)</td>
<td>(Transitional provision date in force)</td>
<td>(Handbook provision coming into force)</td>
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</tbody>
</table>
| 25 | COLL 3 to COLL 8 | (1) The following chapters and provisions of COLL apply as if the amendments made to those chapters and provisions by the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011 had not been made in respect of an ICVC in the circumstances specified under (2):
(a) COLL 3;
(b) COLL 4;
(c) COLL 5; | From 21 December 2011 to 20 December 2014 | 21 December 2011 |
(d) COLL 6;
(e) COLL 7 (except COLL 7.3.3G and COLL 7.3.7R(9));
and
(f) COLL 8.

(2) The chapters and provisions referred to in (1) apply as described in respect of an ICVC until the date on which either:

(a) the instrument of incorporation is amended to contain a statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations; or

(b) an authorisation order is given to an ICVC which contains in its instrument of incorporation the statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations.

From 21 December 2011 to 20 December 2014

In respect of an ICVC which is amending its instrument of incorporation under COLL TP 1.1R(25)(2)(a), the FSA must be provided with the notification required by regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 in writing. That notification must consist of a statement confirming that the umbrella does not have any agreements or contracts with a third party the provisions of which are inconsistent with paragraph (1) or (2) of regulation 11A of the OEIC Regulations. The notification must be provided at the same time as providing the notification required by regulation 21 of the OEIC
Prior to amending the instrument of incorporation as set out in COLL TP1.1R(25)(2)(a), regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 requires notification to be provided to the FSA in such form as the FSA may direct. The form in which the FSA directs this notification is to be provided is set out in TP1.1D(26).

| 27 | COLL 3 to COLL 8 | G | From 21 December 2011 to 20 December 2014 | 21 December 2011 | regulations |