Powers exercised by the Financial Conduct Authority

A. The Financial Conduct 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 137A (The FCA’s general rules);
(b) section 137B(3) (FCA general rules: clients’ money, right to rescind etc.);
(c) section 137R (Financial promotion rules);
(d) section 137T (General supplementary powers);
(e) section 139A (Power of the FCA to give guidance);
(f) section 213 (The compensation scheme);
(g) section 214 (General);
(h) section 238 (Restrictions on promotion);
(i) section 247 (Trust scheme rules);
(j) section 248 (Scheme particulars rules);
(k) section 261C (Applications for authorisation of contractual schemes);
(l) section 261I (Contractual scheme rules); and
(m) section 261J (Contractual scheme particulars rules);
(o) section 395 (The FCA’s and PRA’s procedures);
(p) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority); and
(q) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;

(2) regulation 6(1) (FCA 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 module of the FCA’s Handbook.

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 July 2013.

Amendments to the Handbook

D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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</thead>
<tbody>
<tr>
<td>Changes to several modules</td>
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</tr>
<tr>
<td>Glossary of definitions</td>
<td>Annex B</td>
</tr>
<tr>
<td>Fees manual (FEES)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Prudential sourcebook for UCITS Firms (UPRU)</td>
<td>Annex D</td>
</tr>
<tr>
<td>Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))</td>
<td>Annex E</td>
</tr>
<tr>
<td>Interim Prudential sourcebook for Investment Businesses (IPRU(INV))</td>
<td>Annex F</td>
</tr>
<tr>
<td>Conduct of Business sourcebook (COBS)</td>
<td>Annex G</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex H</td>
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<tr>
<td>Decision Procedure and Penalties manual (DEPP)</td>
<td>Annex I</td>
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<td>Compensation sourcebook (COMP)</td>
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<td>Collective Investment Schemes sourcebook (COLL)</td>
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<tr>
<td>Listing Rules sourcebook (LR)</td>
<td>Annex L</td>
</tr>
<tr>
<td>Disclosure Rules and Transparency Rules sourcebook (DTR)</td>
<td>Annex M</td>
</tr>
</tbody>
</table>

**Material outside the Handbook**

E. The Enforcement Guide (EG) is amended in accordance with Annex N to this instrument.

F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex O to this instrument.

**Notes**

G. In Annex A to this instrument, the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

H. This instrument may be cited as the Authorised Contractual Schemes (Handbook Amendments) Instrument 2013.

By order of the Board of the Financial Conduct Authority
27 June 2013
Annex A

Amendments to the Handbook and the Regulatory guides

In this Annex:

(a) in Table 1 (Deletions and replacements table), the word or phrase in column (1) is replaced by the word or phrase in column (2) where indicated in columns (3) and (4). Column (5) identifies further explanation to the amendment where this is needed; and

(b) in Table 2 (Additions table), the word or phrase in column (1) is added where indicated in column (2), (3) and (4). Column (5) identifies further explanation to the amendment where this is needed.

Table 1: ‘Deletions and replacements table’

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<td>COLL</td>
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<td>or section 248 (Scheme particular rules)</td>
<td>, section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules)</td>
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**Table 2: ‘Additions table’**

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<td>definition of “unitholder”</td>
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<td>4.1.1R(1), (3) and concluding wording</td>
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<td>4.7.1R</td>
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<td>6.1.1R(1), (3) and concluding wording</td>
<td>insert after “AUT”</td>
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<td>both occurrences</td>
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<td>3.2.5G(1) and (2)</td>
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<td>6.4.2G</td>
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<td>Act of the Authority</td>
<td>Insertion</td>
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<td>or contractual scheme deed</td>
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<td></td>
<td>7.6.1G(1)</td>
<td>insert after “(Alteration of schemes and changes of manager or trustee)”</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>11.6.3R(1)(b)</td>
<td>insert after “of the Act”</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex B

Amendments to the Glossary of definitions

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

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

ACS

an authorised contractual scheme.

acting as the depositary of an authorised contractual scheme

the regulated activity, specified in article 51(1)(bb) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as the depositary of an authorised contractual scheme.

authorised contractual scheme

a co-ownership scheme or a limited partnership scheme.

authorised contractual scheme manager

a firm, including, if relevant, an EEA UCITS management company, which is the authorised fund manager of the ACS in accordance with the contractual scheme deed.

contractual scheme deed

(in COLL) the deed referred to in COLL 3.2.3AR (The contractual scheme deed for ACSs), together with any deed expressed to be supplemental to it, made between the authorised fund manager and:

(a) the depositary, in the case of a co-ownership scheme; or

(b) the nominated partner, in the case of a limited partnership scheme.

Contractual Scheme Regulations

the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/1388).

contractual scheme rules

rules in COLL made by the FCA under section 261I of the Act (Contractual scheme rules) in relation to:

(a) the constitution, management and operation of ACSs;

(b) the powers, duties, rights, and liabilities of the authorised fund manager and depositary of any such scheme;

(c) the rights and duties of the participants in any such scheme; and

(d) the winding up of any such scheme.

c o-ownership scheme

(as defined in section 235A(2) of the Act (Contractual schemes)) a collective investment scheme which satisfies the conditions in section 235A(3) and which is authorised for the purposes of the Act by an
authorisation order.

**intermediate unitholder**

a firm whose name is entered in the register of a non-UCITS retail scheme or a UCITS scheme, or which holds units in a non-UCITS retail scheme or a UCITS scheme indirectly through a third party acting as a nominee, and which is not the beneficial owner of the relevant unit, and:

(a) does not manage investments on behalf of the relevant beneficial owner of the unit; or

(b) does not act as a depositary of a collective investment scheme or on behalf of such a depositary in connection with its role in holding property subject to the scheme.

For the purposes of this definition, “register” has the meaning set out in paragraph (3) of the Glossary definition of “register”.

**intermediate unitholder in a qualified investor scheme**

a firm whose name is entered in the register of a qualified investor scheme, or which holds units in a qualified investor scheme indirectly through a third party acting as a nominee, and is not the beneficial owner of the relevant unit, and:

(a) does not manage investments on behalf of the relevant beneficial owner of the unit; or

(b) does not act as a depositary of a collective investment scheme or on behalf of such a depositary in connection with its role in holding property subject to the scheme.

For the purposes of this definition, “register” has the meaning set out in paragraph (3) of the Glossary definition of “register”.

**large ACS investor**

in relation to an ACS, a person who in exchange for units in the scheme:

(a) makes a payment of not less than £1,000,000; or

(b) contributes property with a value of not less than £1,000,000.

**limited partner**

in relation to a limited partnership scheme, a participant in the scheme (other than the nominated partner).

**limited partnership scheme**

(as defined in section 235A(5) of the Act (Contractual schemes)) a collective investment scheme which satisfies the conditions in section 235A(6) and which is authorised for the purposes of the Act by an authorisation order.

**nominated partner**

the person nominated by the operator of a proposed limited partnership scheme to be the only limited partner (but not a participant) of the scheme on its formation.
Amend the following as shown.

**affected person** …

(b) (in relation to an AUT):

…

(v) the auditor of the scheme;

(c) (in relation to an ACS):

(i) the authorised fund manager;

(ii) the depositary;

(iii) any investment adviser of the authorised fund manager;

(iv) any associate of any person in (c)(i), (ii) or (iii);

(v) the auditor of the scheme;

(vi) the nominated partner.

**agrees to carry on a regulated activity** the regulated activity, specified in article 64 of the Regulated Activities Order (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:

…

(f) …

(ff) acting as the depositary of an authorised contractual scheme;

…

**authorisation order** an order made by the FCA:

…

(c) in relation to an ACS under section 261D of the Act (Authorisation orders):

as a result of which the AUT or ACS becomes authorised or the body becomes incorporated as an ICVC under regulation 3 of the OEIC Regulations (Open-ended investment company).
authorised fund manager

an ACD, an authorised contractual scheme manager or an authorised unit trust manager.

base currency

(1) (in COLL) the currency specified:

... 

(b) in the trust deed of an AUT as the base currency of the AUT;

(c) in the contractual scheme deed of an ACS as the base currency of the ACS.

...

cancellation

(in COLL) (in relation to units) a cancellation of a unit by:

(a) an ICVC;

(b) by the trustee of an AUT;

(c) the depositary of an ACS.

depositary

(1) (except in LR):

...

(ca) ...

(cb) (in relation to an ACS which is a co-ownership scheme) the person who holds the property subject to the scheme or to whose order that property is held, as required by section 235A(3)(d) of the Act (Contractual schemes);

(cc) (in relation to an ACS which is a limited partnership scheme) the person who holds the property subject to the scheme or to whose order that property is held, and who has been appointed to be the person to whom the property subject to the scheme is entrusted for safekeeping, as required by section 235A(6)(e)(i) of the Act (Contractual schemes);

...

...

designated investment business

any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business):

...
(k) …

(ka) acting as the depositary of an authorised contractual scheme
(article 51(1)(bb));

…

**Financial Services Register**

the public record, as required by section 347 of the Act (The public record), regulation 4 of the Payment Services Regulations (The register of certain payment service providers) and regulation 4 of the Electronic Money Regulations, of every:

…

(c)

(ca) ACS;

…

**instrument constituting the scheme**

…

(ba) …

(bb) (in relation to an ACS) the contractual scheme deed;

…

**investment adviser**

(in relation to an authorised fund) a person who is retained by an ICVC, its directors or its ACD or by a manager of an AUT or by an authorised contractual scheme manager of an ACS under a commercial arrangement which is not a contract of service:

…

**investment management firm**

… a firm … which is within (a), (b) or (c):

…

(c) a firm:

…

(ii) for which the most substantial part of its gross income …

is derived from one or more of the following activities…:

…

(D) …
(Da) acting as the authorised contractual scheme manager or depositary of an ACS;

(E) establishing, operating or winding up a collective investment scheme (other than an AUT, ICVC or ACS);

... issue (in relation to units):

(1) (except in EG 14) the issue of new units by the trustee of an AUT, the depositary of an ACS or by an ICVC;

... issuer (1) (except in LR, PR and DTR):

... (c) (in relation to an interest in a limited partnership except for a limited partnership scheme) the partnership;

... management company (in accordance with article 2(1)(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds (including authorised contractual schemes) or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6(3) of that directive.

operator (1) (except in EG):

(a) ...

(aa) (in relation to an ACS) the authorised contractual scheme manager;

... (c) ...

(ca) (in relation to any other collective investment scheme that is a contractual scheme) any person who, under the constituent instrument, is responsible for the management of the property held for or within the scheme;
overseas person

(in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) a person who:

(a) carries on any of the following regulated activities:

(1) …

(xiii) …

(xiii) acting as the depositary of an authorised contractual scheme;

(2) …

redemption

(1) …

(2) (in EG 14 (Collective investment schemes)) redemption as in (1) but including their cancellation by:

(a) the trustee of an AUT;

(b) the depositary of an ACS; or by

(c) an ICVC.

register

(1) …

(2) …

(3) (in COLL) the register of unitholders kept under Schedule 3 to the OEIC Regulations or COLL 6.4.4R (Register: general requirements and contents), or COLL 8.5.8R (The register of unitholders: AUTs or ACSs) as appropriate or, in relation to a collective investment scheme that is not an authorised fund, a record of the holders (other than of bearer certificates) of units in it.

regulated activity

(in accordance with section 22 of the Act (Regulated activities)) any of the following activities specified in Part II of the Regulated Activities Order (Specified Activities):

(1) …

(m) …

(ma) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));
regulated collective investment scheme

(b) …

(ba) an ACS; or

…

unit

the investment, specified in article 81 of the Regulated Activities Order (Units in a collective investment scheme) and defined in section 237(2) of the Act (Other definitions)), which is the right or interest (however described) of the participants in a collective investment scheme; this includes:

(a) …

(aa) (in relation to an ACS) a unit representing the rights or interests of the unitholders in the ACS; and

…

unit trust scheme

(as defined in section 237(1) of the Act (Other definitions)) a collective investment scheme under which the property in question is held on trust for the participants, except that it does not include an authorised contractual scheme.

…

unitisation

arrangements for a newly formed AUT or ACS under which:

(a) the whole or part of the property of a body corporate (or a collective investment scheme) becomes the first property to be held on the trusts scheme property of the AUT or ACS; and

(b) the holders of:

(i) shares in the body corporate being wound up; or

(ii) units in the collective investment scheme, the property of which is being transferred;

become the first participants in the AUT or ACS.

…

unrecognised scheme

(in LR) a collective investment scheme which is neither a recognised scheme nor a scheme that is constituted as an authorised unit trust scheme or authorised contractual scheme.
waiver  a direction waiving or modifying a rule, given by the appropriate regulator under section 138A of the Act (Modification or waiver of rules) or by the FCA under sections 250, 261L or 294 of the Act (Modification or waiver of rules) or regulation 7 of the OEIC Regulations (see SUP 8 and REC 3.3).
Annex C

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

... Application

1.1.2 R The manual applies in the following way:

(1) ...

(2) FEES 1, 2 and 4 apply to:

... every manager authorised fund manager of an authorised unit trust or authorised contractual scheme;

...

3 Annex 2R Application and notification fees payable in relation to collective investment schemes

<table>
<thead>
<tr>
<th>Legislative provision</th>
<th>Nature and purpose of fee</th>
<th>Payable by</th>
<th>Amount of fee</th>
<th>Umbrella factor (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 2 Application fees payable for firms to be subject to COLL

... Section 242 of the Act ...

Section 261C of the Act On application for an order declaring a scheme to be an ACS, whether it is established as a co-ownership scheme or a limited partnership | An applicant | 2 |
scheme, where the scheme is a:

<table>
<thead>
<tr>
<th>Type of Scheme</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>UCITS scheme</td>
<td>£1,200</td>
</tr>
<tr>
<td>non-UCITS retail scheme</td>
<td>£1,500</td>
</tr>
<tr>
<td>qualified investor scheme</td>
<td>£2,400</td>
</tr>
</tbody>
</table>

4.2 Obligation to pay periodic fees

4.2.11 R Table of periodic fees payable to the FCA

<table>
<thead>
<tr>
<th>1 Fee payer</th>
<th>2 Fee payable</th>
<th>3 Due date</th>
<th>4 Events occurring during the period leading to modified periodic fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any manager of an authorised unit trust;</td>
<td>In relation to each unit trust the amount specified in FEES 4 Annex 4R</td>
<td>(1) Unless (2) applies, on or before 30 April (2) If an event in column 4 occurs during the course of a fee year, 30 days after the occurrence of that event</td>
<td>…</td>
</tr>
<tr>
<td>Any authorised fund manager of an authorised contractual scheme;</td>
<td>In relation to each authorised contractual scheme the amount specified in FEES 4 Annex 4R</td>
<td>…</td>
<td>Authorisation order is made in relation to the relevant scheme</td>
</tr>
</tbody>
</table>
### 4 Annex 1AR  FCA Activity groups, tariff bases and valuation dates

<table>
<thead>
<tr>
<th>Part 1</th>
<th>This table shows how the FCA links the regulated activities for which a firm has permission to activity groups (fee-blocks). A firm can use the table to identify which fee-blocks it falls into based on its permission.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity group</td>
<td>Fee payer falls in the activity group if</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>A.9 Operators, Trustees and Depositaries of collective investment schemes and Operators of personal pension schemes</td>
<td>(1) its permission:</td>
</tr>
<tr>
<td></td>
<td>(a) includes one or more of the following:</td>
</tr>
<tr>
<td></td>
<td>... acting as trustee of an authorised unit trust scheme; acting as the depositary of an authorised contractual scheme; ...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 3</th>
<th>This table indicates the tariff base for each fee-block set out in Part 1.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity group</td>
<td>Tariff base</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>A.9 GROSS INCOME</td>
<td>For operators (including ACDs and managers authorised fund managers of unit trusts or authorised contractual schemes but excluding operators of a personal pension scheme or a stakeholder pension scheme):</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>PLUS</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>For depositaries (including trustees of collective investment schemes and ICVC or ACS depositaries):</td>
</tr>
<tr>
<td></td>
<td>The amount of the annual charge levied on funds in regulated collective investment schemes for which they act as depositary (typically a % of the total funds for which they act as depositary).</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
### 4 Annex 4R  Periodic fees in relation to collective investment schemes payable for the period 1 April 2012 to 31 March 2013

Part 1 – Periodic fees payable

<table>
<thead>
<tr>
<th>Scheme type</th>
<th>Basic fee (£)</th>
<th>Total funds/sub-funds aggregate</th>
<th>Fund factor</th>
<th>Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICVC, AUT, ACS, Section 264 of the Act Section 270 of the Act</td>
<td>…</td>
<td>1 – 2</td>
<td>1</td>
<td>…</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 – 6</td>
<td>2.5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>7 – 15</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>16 – 50</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 50</td>
<td>22</td>
<td></td>
</tr>
</tbody>
</table>

### 6 Annex 3AR  Financial Services Compensation Scheme - classes

<table>
<thead>
<tr>
<th>Class D1</th>
<th>Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investment provision</td>
</tr>
</tbody>
</table>

Firms with permission for:

<table>
<thead>
<tr>
<th>Any of the following:</th>
</tr>
</thead>
</table>

| acting as trustee of an authorised unit trust scheme; |
| acting as the depositary of an authorised contractual scheme; |
| ... |

...
Annex D

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

Schedule 6  Rules that can be waived

<table>
<thead>
<tr>
<th>6.1</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The rules in this sourcebook can be waived by the FCA under sections 138A and 138B or 250 or 261L of the Act (Modification or waiver of rules) or regulation 7 of the OEIC Regulations (Modification or waiver of FCA rules).</td>
</tr>
<tr>
<td>2.</td>
<td>...</td>
</tr>
</tbody>
</table>
Annex E

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

In this Annex, underlining indicates new text.

7 Chapter 7: Definitions

Part 1 DEFINITIONS

7.1 In this Part of the IPRU(FSOC), unless the contrary intention appears, the following definitions apply -

<table>
<thead>
<tr>
<th>…</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>issuer</strong> in respect of a <em>collective investment scheme</em> means the manager or operator of the scheme and in respect of an interest in a limited partnership (other than a <em>limited partnership scheme</em>) means the partnership;</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>
Annex F

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

Appendix 1  GLOSSARY OF TERMS FOR IPRU(INV) 3

investment means any of the following regulated activities specified in Part II of the Regulated Activities Order and which is carried on by way of business:

(j) acting as trustee of an authorised unit trust scheme (article 51(1)(b)) or acting as the depositary of an authorised contractual scheme (article 51(1)(bb));

5 Chapter 5: Financial Resources

Table 5.2.3(5)(a) EXPENDITURE BASED REQUIREMENT

PART II

FRACTIONS

1: The fraction is 6/52 where:

(a) …

(aa) the firm is an authorised contractual scheme manager; or

…

Note: Paragraph 1(a) above includes a firm which acts as both an authorised unit trust manager and, in addition, as both or either:
(a) an authorised corporate director of an ICVC; or
(b) an authorised contractual scheme manager.

... 

Table 5.2.3(5)(e) OTHER ASSETS REQUIREMENT

... 

PART II

RISK FACTORS

Assets and Off-Balance Sheet Items Risk Factor

... 

Amount due from trustees of authorised unit trusts or depositaries of authorised contractual schemes NIL

Note

This only applies to firms who are authorised unit trust managers in relation to authorised unit trusts or authorised contractual scheme managers in relation to authorised contractual schemes they manage.

... 

Appendix 1: Interpretation

Glossary of terms for Chapter 5 (Former IMRO Firms)

... 

Term Meaning

... 

authorised contractual scheme a co-ownership scheme or a limited partnership scheme.

authorised contractual scheme manager means the authorised fund manager of an authorised contractual scheme.
co-ownership scheme (as defined in section 235A(2) of the Act (Contractual schemes)) a collective investment scheme which satisfies the conditions in section 235A(3) and which is authorised for the purposes of the Act by an authorisation order.

...

limited partnership scheme (as defined in section 235A(5) of the Act (Contractual schemes)) a collective investment scheme which satisfies the conditions in section 235A(6) and which is authorised for the purposes of the Act by an authorisation order.
Annex G

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

14.2 Providing product information to clients

Provision of key investor information document

14.2.1A R (1) This rule applies to an authorised fund manager of a UCITS scheme that is either an authorised unit trust, authorised contractual scheme or an ICVC, and an ICVC that is a UCITS scheme.
Annex H

Amendments to the Supervision manual (SUP)

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

6.1 Application, interpretation and purpose

Application

...

6.1.2 G If appropriate, a firm which is an authorised fund manager should also refer to COLL 7 for guidance on the termination of ICVCs, ACSs and AUTs and on winding up authorised funds that are not commercially viable.

...

8.2 Introduction

...

Waivers of rules in COLL

8.2.3 G Section Sections 250 and 261L of the Act and regulation 7 of the OEIC Regulations allow the FCA to waive the application of certain rules in COLL to:

(1) a person, as respects a particular AUT, ACS or ICVC, on the application or with the consent of that person; and

(2) an AUT, ACS or ICVC on the application or with the consent of the manager and trustee (in the case of an AUT), the authorised contractual scheme manager and depositary (in the case of an ACS) or the ICVC and its depositary (in the case of an ICVC).

8.2.4 G Those persons to whom section sections 250 and 261L and regulation 7 of the OEIC Regulations are relevant, but who are not firms, should follow SUP 8 as if they were firms.

8.2.5 G Section Sections 250 and 261L of the Act and regulation 7 of the OEIC Regulations work by giving effect to section 138A of the Act in respect of waivers given under section 250(2) and (3), section 261L(2) and (3) and regulation 7(1) and (2) of the OEIC Regulations.

...

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...
<table>
<thead>
<tr>
<th></th>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUP</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

**SUP 16 (Reporting requirements)**
Parts of this chapter may apply if the firm has a top-up permission or if the firm is:

... (d)...
(da) a depositary of an ACS; or...

... (c)...
(ca) a depositary of an ACS; or...

**COLL**
An EEA UCITS management company providing collective portfolio management services for a UCITS scheme should be aware that it will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, the firm:

... (b) wishes to apply for an authorisation order to establish an AUT, ACS or ICVC...
as a UCITS scheme; or

...

...

16.1 Application

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

<table>
<thead>
<tr>
<th>(1) Section(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUP 16.6</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Trustee of an AUT</td>
<td>SUP 16.6.6R to SUP 16.6.9G</td>
<td></td>
</tr>
<tr>
<td>Depositary of an ACS</td>
<td>SUP 16.6.6R to SUP 16.6.9G</td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16.6 Compliance reports

Applicable provisions of this section (see SUP 16.6.1G)

16.6.2 G Category of firm Applicable provisions

| …                                                                 |
| …                                                                 |
| Trustee of an AUT                                                 |
| Depositary of an ICVC                                              |
| Depositary of an ACS                                              |
| …                                                                 |

Trustees of authorised unit trust schemes, depositaries of ICVCs and authorised contractual schemes, and OPS firms

16.6.6 R A firm within a category listed in the left-hand column of SUP 16.6.7R must submit compliance reports in accordance with SUP 16.6.7R.
16.6.7 Compliance reports from trustees of AUTs, depositaries of ICVCs and ACSs, and OPS firms (see SUP 16.6.6R)

<table>
<thead>
<tr>
<th>Report</th>
<th>Frequency</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report from a trustee of an AUT on manager’s failures as set out in SUP 16.6.8R(1)</td>
<td>Quarterly</td>
<td>1 month after quarter end (Note)</td>
</tr>
<tr>
<td>Report from a depositary of an ACS on failures by the authorised contractual scheme manager as set out in SUP 16.6.8R(2A)</td>
<td>Quarterly</td>
<td>1 month after quarter end (Note)</td>
</tr>
</tbody>
</table>

16.6.8 …

(2) …

(2A) The report from a depositary of an ACS to the FCA must state, in relation to the authorised contractual scheme manager of each ACS for which the firm is a depositary, the number of times during the quarter in which facts came to the firm’s knowledge from which it appeared, or might have appeared, that the authorised contractual scheme manager had failed (materially or otherwise) to:

(a) arrange for the issue or cancellation of units in the ACS when the authorised contractual scheme manager should have done so, and the error:

(i) resulted in the creation of too few units or in the cancellation of too many units; and

(ii) was not corrected in accordance with the FCA’s guidance as set out in COLL 6.2.12G;

(b) price units in the ACS in accordance with the provisions of COLL 6.3, where the pricing error was:

(i) greater than 0.5% of the price of a unit; or

(ii) less than 0.5% of the price of a unit, and the depositary did not consider the authorised contractual scheme manager’s controls to be
adequate;
unless the failure was an isolated incident.

16.6.9  G  SUP 16 Annex 12 provides guidance on the completion of the report from a trustee of an AUT on a manager’s failures as set out in SUP 16.6.8R(1), and the report from a depositary of an ICVC or ACS on failures by the authorised corporate director or authorised contractual scheme manager as set out in SUP 16.6.8R(2) and SUP 16.6.8R(2A). This guidance includes suggested formats for the submission of the reports.

16.12  Integrated Regulatory Reporting

16.12.4  R  Table of applicable rules containing data items, frequency and submission periods

<table>
<thead>
<tr>
<th>RAG number</th>
<th>Regulated Activities</th>
<th>Provisions containing:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>applicable data items</td>
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<tr>
<td></td>
<td></td>
<td>reporting frequency/period</td>
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<td>due date</td>
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<table>
<thead>
<tr>
<th>RAG 6</th>
<th>acting as trustee of an authorised unit trust</th>
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<tr>
<td></td>
<td>acting as the depositary of an authorised contractual scheme</td>
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...
SUP 16 Ann 12G:

Reports from trustees of AUTs and depositaries of ICVCs, AUTs and ACSs (see SUP 16.6.9G)

1 Table

1. Trustees Depositaries of AUTs and ACSs

(1) Form 1 at the end of this annex provides a suggested format for the submission of the reports.

(2) The quarterly report should be completed each year as at 31 March, 30 June, 30 September, and 31 December.

(3) The report should be signed by an approved person who has responsibility for the firm’s trustee depositary area.

(4) A firm should refer to CIS 4, 7, 15 COLL 6 and COLL 6.2.12G and Appendix CIS before completing this report.

2. Depositaries of ICVCs

(1) Form 2 at the end of this annex provides a suggested format for the submission of the reports.

(2) The quarterly report should be completed each year as at 31 March, 30 June, 30 September, and 31 December.

(3) The report should be signed by an approved person who has responsibility for the firm’s depositary area.

(4) A firm should refer to CIS 4, 7 and Appendix CIS COLL 6 and COLL 6.2.12G before completing this report.
### SUP 16: Reporting requirements

#### Annex 12G

**Form 1**

Quarterly Return of Notifiable Breaches – Authorised Unit Trusts and authorised contractual schemes

1. Pricing Errors

<table>
<thead>
<tr>
<th>Authorised Fund Manager</th>
<th>Did status of authorised fund manager change in quarter? (Note)</th>
<th>No. of pricing errors of 0.5% and above</th>
<th>No. of pricing errors below 0.5%, where trustee depositary does not consider authorised fund manager’s controls to be adequate</th>
<th>No. of authorised unit trusts or authorised contractual schemes in operation</th>
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</table>

**Note** = From “controls adequate” to “controls inadequate” (or vice versa). Where the authorised fund manager’s status changed, the report should state the date of that change and the number of reportable breaches of **CIS 4 and 15 COLL 6** before and after that change of status.

2. Negative Boxes

<table>
<thead>
<tr>
<th>Authorised Fund Manager</th>
<th>Did status of authorised fund manager change in quarter? (Note 1)</th>
<th>No. of negative boxes where CIS 4.3.12 COLL 6.2.10R and CIS 15.3.12R have not been applied. (Note 2)</th>
<th>No. of authorised unit trusts or authorised contractual schemes in operation</th>
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**Note 1** = From “controls adequate” to “controls inadequate” (or vice versa). Where the authorised fund manager’s status changed, the report should state the date of that change and the number of reportable breaches of **CIS 4 and 15 COLL 6** before and after that change of status.

**Note 2** = The application of **CIS 4.3.12R and CIS 15.3.12R** **COLL 6.2.10R** relates to the correction of an error by the authorised fund manager with the trustee’s depositary’s agreement in accordance with **CIS 4.3.12R and CIS 15.3.12R COLL 6.2.10R**.

The statistical information above has been provided to the **FCA** in accordance with **SUP 16.6.8R(1)**.

Knowingly or recklessly giving the **FCA** information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). **SUP 15.6.1R** and **SUP 15.6.4R** require an **authorised person** to take reasonable steps to ensure the accuracy and completeness of information given to the **FCA** and to notify the **FCA** immediately if materially inaccurate information has been provided. **SUP 16.3.11R** requires an **authorised person** to submit reports containing all the information required. **APER 4.4.6E** provides that, where an
approved person is responsible for reporting matters to the FCA, failure to inform the FCA of materially significant information of which he is aware is a breach of Statement of Principle 4. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FCA. It should not be assumed that information is known to the FCA merely because it is in the public domain or has previously been disclosed to the FCA or another regulatory body. If there is any doubt about the relevance of information, it should be included.

See SUP 16.3 for method of submission.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signed

Name

Position

Date
**SUP 16: Reporting requirements**

**Annex 12G**

**Form 2**

Quarterly Return of Notifiable Breaches – Investment Companies with Variable Capital

1. **Pricing Errors**

<table>
<thead>
<tr>
<th>Authorised Corporate Director (ACD)</th>
<th>Did status of ACD change in quarter? (Note)</th>
<th>No. of pricing errors of 0.5% and above</th>
<th>No. of pricing errors below 0.5%, where depositary does not consider ACD’s controls to be adequate</th>
<th>1. No. of Investment Companies with Variable Capital in operation</th>
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<tbody>
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</table>

Note = From “controls adequate” to “controls inadequate” (or vice versa). Where the ACD’s status changed, the report should state the date of that change and the number of reportable breaches of **CIS 4 COLL 6** before and after that change of status.

2. **Negative Boxes**

<table>
<thead>
<tr>
<th>Authorised Corporate Director (ACD)</th>
<th>Did status of ACD change in quarter? (Note 1)</th>
<th>No. of negative boxes where <strong>CIS 4.3.12R COLL 6.2.10R</strong> has not been applied. (Note 2)</th>
<th>2. No. of Investment Companies with Variable Capital in operation</th>
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Note 1 = From “controls adequate” to “controls inadequate” (or vice versa). Where the ACD’s status changed, the report should state the date of that change and the number of reportable breaches under **CIS 4 COLL** before and after that change of status.

Note 2 = The application of **CIS 4.3.12R COLL 6.2.10R** relates to the correction of an error by the ACD with the depositary’s agreement in accordance with **CIS 4.3.12R COLL 6.2.10R**.

The statistical information above has been provided to the **FCA** in accordance with **SUP 16.6.8R(2)**.

Knowingly or recklessly giving the **FCA** information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). **SUP 15.6.1R** and **SUP 15.6.4R** require an **authorised person** to take reasonable steps to ensure the accuracy and completeness of information given to the **FCA** and to notify the **FCA** immediately if materially inaccurate information has been provided. **SUP 16.3.11R** requires an
authorised person to submit reports containing all the information required. APER 4.4.6E provides that, where an approved person is responsible for reporting matters to the FCA, failure to inform the FCA of materially significant information of which he is aware is a breach of Statement of Principle 4. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FCA. It should not be assumed that information is known to the FCA merely because it is in the public domain or has previously been disclosed to the FCA or another regulatory body. If there is any doubt about the relevance of information, it should be included.

See SUP 16.3 for method of submission.

I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.

Signed

Name

Position

Date
Annex I

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2.5 Provision for certain categories of decision

... Modified procedures in collective investment scheme and certain other cases...

2.5.13 G The decisions referred to in DEPP 2.5.12G are:

(1) ... 

(1A) the decision to give a supervisory notice pursuant to section 261Z1(3), (8) or (9)(b) (Procedure on giving directions under section 261X or 261Z and varying them on FCA’s own initiative) of the Act;

...

(4)

(4A) the decision to give a warning notice or decision notice pursuant to section 255 or 260 of the Act;

(4B) the decision to give a warning notice or decision notice pursuant to section 261V or 261Z2 of the Act;

...

2.5.14 G In determining whether there is agreement to or acceptance of the action proposed, an indication by the following persons will be regarded as conclusive:

(1) ... 

(1A) in relation to an authorised contractual scheme, the authorised contractual scheme manager and depositary;

...

2.5.15 G A decision to give a warning notice or decision notice refusing an application for an authorisation order declaring a unit trust scheme scheme to be an AUT, ACS or ICVC will be taken by the RDC only if the application is by an authorised fund manager who is not the operator of an existing AUT, ACS or ICVC. Otherwise, the decision to give the warning notice or decision notice...
will be taken by *FCA* staff under *executive procedures*.

...  

### 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk *(see *DEPP* 2.4)*

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>...</td>
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<tr>
<td>260(1)/(2)</td>
<td>...</td>
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</tbody>
</table>
| 261G(1)/(2)        | when the *FCA* is proposing or deciding to refuse an application for an *authorisation order declaring a scheme to be an ACS* | **COLL 2** | **RDC or executive procedures**  
See *DEPP* 2.5.15G |
<p>| 261R(1)/(4)        | when the <em>FCA</em> is proposing or deciding to refuse approval of a proposal to replace the <em>depositary or authorised contractual scheme manager of an ACS</em> | <strong>COLL 2</strong> | <strong>Executive procedures</strong> |
| 261S(4)(b)/(6)(a)  | when the <em>FCA</em> is proposing or deciding to refuse approval of a proposal by the <em>authorised contractual scheme manager of an ACS</em> which is a <em>feeder UCITS</em> to make an alteration to the <em>contractual scheme deed</em> to enable the <em>feeder UCITS</em> to convert into a <em>UCITS scheme</em> which is not a <em>feeder UCITS</em> | <strong>COLL 11</strong> | <strong>Executive procedures</strong> |
| 261V(1)/(2)        | when the <em>FCA</em> is proposing or deciding to make an order under section 261U revoking | None, but see Chapter 14 of the | <strong>RDC</strong> |</p>
<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>261W(4)/(5)</td>
<td>when the <strong>FCA</strong> is proposing or deciding to refuse a request for the revocation of the <strong>authorisation order</strong> of an <strong>ACS</strong></td>
<td><strong>RDC</strong></td>
<td></td>
</tr>
<tr>
<td>261Z2(1)/(2)</td>
<td>when the <strong>FCA</strong>, on an application to revoke or vary a direction under section 261X, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application</td>
<td><strong>RDC</strong></td>
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<td>...</td>
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<tr>
<td>345B(1)</td>
<td>when the <strong>FCA</strong> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <strong>authorised person</strong> or class of <strong>authorised person</strong> or from being the auditor of any <strong>AUT, ACS</strong> or <strong>ICVC</strong></td>
<td><strong>RDC</strong></td>
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<tr>
<td>345B(4)</td>
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### 2 Annex 2G  Supervisory notices

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>259(3)/(8)/ (9)(b)</td>
<td>...</td>
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<tr>
<td>261Z1</td>
<td>when the <em>FCA</em> gives a direction under section 261X or section 261Z</td>
<td><strong>COLL</strong></td>
<td><strong>RDC</strong></td>
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</table>
Annex J

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

5.5 Protected investment business

5.5.1 R Protected investment business is:

... 

(4) the activities of the authorised contractual scheme manager or depositary of an ACS, provided that the claim is made by a holder.

...
Annex K

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

1.1 Applications and purpose

Application

1.1.1 G (1) This sourcebook, except for COLL 9 (Recognised schemes), applies to:

... 

(c) managers and trustees of authorised unit trust schemes (AUTs); and

(ca) authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACSs); and

...

...

EEA UCITS management companies of UCITS schemes

1.1.1C G An EEA UCITS management company that is providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom, or under the freedom to provide cross border services, is advised that where it operates a UCITS scheme as its designated management company, it meets the Glossary definition of an “ACD” of an ICVC or a “manager” of an AUT or an authorised contractual scheme manager of an ACS, which in each case is a UCITS scheme. Such firms should be aware that provisions in this sourcebook that apply to an ACD or a manager or an authorised fund manager of a UCITS scheme accordingly apply to them, unless otherwise indicated: see COLL 12.3 (EEA UCITS management companies) for further details.

...

1.2 Types of authorised fund

...

Umbrella schemes
1.2.1A Any authorised fund, except for an ACS that is a limited partnership scheme, may be structured as an umbrella with separate sub-funds.

[Note: article 1(2) second paragraph of the UCITS Directive]

Types of authorised fund - explanation

1.2.2 The changes referred to in (2) and (3) require approval by the FCA and further information on that process is provided in COLLG 3A.1.6G (Notification of changes to unit trusts (sections 251 and 252A)) and COLLG 4A.1.3G (Notification of changes to ICVCs (Regulations 21 and 22A)).

2.1 Authorised fund applications

Explanation

2.1.3 This chapter sets out the requirements that a person must follow in applying for an authorisation order for a scheme under regulation 12 of the OEIC Regulations (Applications for authorisation), or section 242 of the Act (Applications for authorisation of unit trust schemes) or section 261C of the Act (Applications for authorisation of contractual schemes).

Application by an EEA UCITS management company to manage a UCITS scheme

2.1.5 An EEA UCITS management company that proposes to act as the manager, authorised fund manager of an AUT, ACS or the ACD of an ICVC that is a UCITS scheme, should be aware that it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the appropriate regulator for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the appropriate regulator certain fund documentation, as specified by COLL 12.3.4R (Provision of documentation to the FSA FCA: EEA UCITS management companies).

[Note: article 20(1) of the UCITS Directive]

3.1 Introduction
Purpose

3.1.2 G This chapter assists in achieving the statutory objective of protecting consumers. In particular:

(1) COLL 3.2 (The instrument constituting the scheme) contains requirements about provisions which must be included in the instrument constituting the scheme to give a similar degree of protection for investors in an ICVC or in an AUT or ACS; and

3.2 The instrument constituting the scheme

Application

3.2.1 R This section applies to:

(1) an authorised fund manager of an AUT, ACS or ICVC;

(2) …

(3) a depositary of an AUT, ACS or an ICVC; and

(4) an ICVC; and

(5) a nominated partner;

except COLL 3.2.8R (UCITS obligations), which applies only to an ICVC or to the manager authorised fund manager of an AUT or ACS where the ICVC or AUT or ACS is a UCITS scheme.

The contractual scheme deed for ACSs

3.2.3A R An ACS must be constituted by a contractual scheme deed made between the authorised contractual scheme manager and:

(1) the depositary, in the case of a co-ownership scheme; or

(2) the nominated partner, in the case of a limited partnership 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
…

Unitholder’s liability to pay

3 A provision that a unitholder in an AUT, ICVC or co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units which he holds.

3A A provision that a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business.

3B A provision that the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business.

…

Issue or cancellation directly through the ICVC or trustee depositary of an AUT or ACS

11 Where relevant, a statement authorising the issue or cancellation of units to take place through the ICVC or trustee depositary of an AUT or ACS directly.

…

Certificates

15 A statement:

(1) for ICVCs and AUTs, authorising the issue of bearer certificates if any, and how such holders are to identify themselves; and

…

ICVCs and ACSs: Charges and expenses

22 A statement that charges or expenses of the ICVC or ACS may be taken out of the scheme property.

…
| 22B | For a co-ownership scheme which is an umbrella, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund. |

| 27 | … |

| ACSs: governing law for a contractual scheme deed |

| 27A | A statement that the contractual scheme deed is made under and governed by the law of England and Wales, or Scotland or Northern Ireland. |

| ACSs: contractual scheme deed to be binding and authoritative |

| 27B | A statement that the contractual scheme deed: |

| (1) | is binding on each unitholder as if it had been a party to it and that it is bound by its provisions; and |

| (2) | authorises and requires the depositary and the authorised contractual manager to do the things required or permitted of them by its terms. |

| ACSs: ownership of scheme property |

| 27C | A statement that, subject to the provisions of the contractual scheme deed and all rules made under section 261I of the Act (Contractual scheme rules) and for the time being in force: |

| (1) | the scheme property (other than sums standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of undivided shares in the scheme property represented by the units held by each unitholder; |

| (2) | the sums standing to the credit of the distribution account are held by the depositary to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution); and |

| (3) | the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants). |

| ACSs: responsibility for the register |
### 27D
A statement identifying the *person* responsible under the *rules* for the maintenance of the *register*.

ACSs: UCITS and NURS eligible investors

### 27E
For an *ACS* which is a *UCITS scheme* or a *non-UCITS retail scheme*, a statement that *units* may not be *issued* to a *person* other than a:

1. *professional ACS investor*;
2. *large ACS investor*; or
3. *person* who already holds *units* in the scheme.

ACSs: UCITS and NURS eligible investors

### 27F
A statement that the *authorised contractual scheme manager* must redeem *units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 27E.

ACSs: UCITS and NURS eligible investors

### 27G
1. A statement whether the transfer of *units* in the *ACS scheme* is either:
   - (a) prohibited; or
   - (b) allowed.
2. Where transfer of *units* is allowed in accordance with (1)(b), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:
   - (a) *professional ACS investor*;
   - (b) *large ACS investor*; or
   - (c) *person* who already holds *units* in the scheme.
3. For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

ACSs: transfer of units

### 27H
For a *co-ownership scheme*, a statement that the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*.

Co-ownership schemes: constitution

### Co-ownership schemes: operator’s powers
27I | A statement that the *operator* of a *co-ownership scheme* is authorised to:
---|---
(1) | acquire, manage and dispose of the *scheme property*; and
(2) | enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

**Co-ownership schemes: winding-up**

27J | A statement that the *operator and depositary* of a *co-ownership scheme* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*.

**Limited partnership schemes: participants**

27K | A statement that the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*.

**Limited partnership schemes: resignation of limited partners**

27L | A statement that the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*.

**Limited partnership schemes: inability to operate as an umbrella**

27M | A statement that the *limited partnership scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*.

...  

### 3.3 Units

...  

**Switching rights: umbrella schemes**

3.3.10 | G (1) ...  
(2) | To satisfy (1), where any *sub-fund* in a *scheme* which is an *umbrella* has provisions in its *prospectus* limiting the *issue of units* in that *sub-fund*, the *authorised fund manager* should ensure that at least two *sub-funds* are able to issue *units* at any time. In the case of an *umbrella* consisting of a single *sub-fund* that limits the issue of *units*, where the *ICVC* or the *manager* *authorised fund manager* of an *AUT* or *co-ownership scheme* of such an *umbrella* intends to offer
additional sub-funds, it should ensure that unitholders will have the right to switch at all times between two or more sub-funds in that umbrella.

…

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) |

<table>
<thead>
<tr>
<th></th>
<th>Authorised fund</th>
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<tr>
<td>2</td>
<td>A description of the authorised fund including:</td>
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<td>…</td>
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<td>(b)</td>
<td>whether it is an ICVC, ACS or an AUT;</td>
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<tr>
<td>(bb)</td>
<td>a statement that unitholders in an AUT, ICVC or co-ownership scheme are not liable for the debts of the authorised fund;</td>
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<td>(bc)</td>
<td>a statement that the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants);</td>
</tr>
<tr>
<td>(bd)</td>
<td>a statement that a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;</td>
</tr>
<tr>
<td>(be)</td>
<td>a statement that the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business;</td>
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<tr>
<td>(c)</td>
<td>…</td>
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<tr>
<td>(ca)</td>
<td>for an ACS that is a limited partnership scheme, the address of the proposed principal place of business of the limited partnership scheme;</td>
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<td>…</td>
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### Umbrella ICVCs or co-ownership schemes

#### 2A
For an ICVC which is an umbrella, a statement that The following statements for an ICVC or a co-ownership scheme which is an umbrella:

- **(a)** for an ICVC, a statement that 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

- **(aa)** for a co-ownership scheme, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund; and

- **(b)** for an ICVC or a co-ownership scheme, a statement that while the provisions of the OEIC Regulations, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the Act in the case of co-ownership schemes, 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 or, as the case may be, section 261P of the Act.

### Characteristics of the units

- ...

### 5A ACSs: UCITS and NURS eligible investors

- **(a)** A statement that units may not be issued to a person other than a:
  - (i) professional ACS investor; or
  - (ii) large ACS investor; or
  - (iii) person who already holds units in the scheme.

- **(b)** A statement that the authorised contractual scheme manager must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in paragraph 5A(a).
5B ACSs: UCITS and NURS transfer of units

(a) A statement whether the transfer of units in the ACS scheme is either:

(i) prohibited; or

(ii) allowed;

by the instrument constituting the scheme and prospectus.

(b) Where transfer of units is allowed by the instrument constituting the scheme and prospectus in accordance with (a)(ii), a statement that units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a:

(i) professional ACS investor; or

(ii) large ACS investor; or

(iii) person who already holds units in the scheme.

(c) For a co-ownership scheme which is an umbrella, a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.

... contracts and other relationships with parties

11 The following relevant details:

... contracts and other relationships with parties

(c)...

(c) in the case of an ACS, a summary of the material provisions of the contracts between:

(i) the authorised fund manager and the nominated partner (if any); and

(ii) the authorised fund manager and depositary;

which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;

(d) if an investment adviser retained in connection with the business of the authorised fund is a body corporate in a group of which any
**Director of the ICVC or the manager authorised fund manager of the AUT or ACS** is a member, that fact;

...  

...  

### Dealing

17 The following particulars:

(a) the procedures, the dealing periods and the circumstances in which the **authorised fund manager** will effect:

...  

(ii) any direct **issue or cancellation of units** by an ICVC or by the **trustee depositary** of an AUT or ACS (as appropriate) through the **authorised fund manager** in accordance with **COLL 6.2.7R(2) (Issue and cancellation of units through an authorised fund manager);**

...  

Marketing in another EEA state

26 A **prospectus** of a **UCITS scheme** which is prepared for the purpose of marketing units in a **EEA State** other than the **United Kingdom**, must give details as to:

...  

(b) how the **ICVC or the manager authorised fund manager** of an **AUT or ACS** will publish in that **EEA State** notice:

...  

Additional information

27 Any other material information which is within the knowledge of the **directors of an ICVC or the manager authorised fund manager of an AUT or ACS**, or which the **directors or manager authorised fund manager** would have obtained by making reasonable enquiries, including but not confined to, the following matters:
4.3 Approvals and notifications

Appointment of a new ACD or manager authorised fund manager

4.3.6A R (1) In the case of a UCITS scheme, the appointment of a new ACD of an ICVC under COLL 6.5.3R (Appointment of an ACD) or the replacement of the manager authorised fund manager of an AUT or ACS who proposes to retire under COLL 6.5.8R (Retirement of a manager authorised fund manager of an AUT or ACS) must, if in either case the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be treated as a significant change in accordance with COLL 4.3.6R.

5.2 General investment powers and limits for UCITS schemes

Application

5.2.1 R (1) This section applies to an ICVC, an ACD, a manager authorised fund manager of an AUT or ACS, a depositary of an ICVC, a trustee of an AUT, AUT or ACS where such ICVC or AUT, AUT or ACS is a UCITS scheme, in accordance with COLL 5.2.2R (Table of application).

Table of application

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Manager of an AUT Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC, AUT or ACS</th>
<th>Trustee of an AUT</th>
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<tr>
<td>5.2.10R(2)(c)</td>
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<td>X</td>
<td>x</td>
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</table>
Significant influence for managers authorised fund managers of AUTs or ACSs

5.2.28 R (1) An authorised fund manager must not acquire, or cause to be acquired for an AUT or ACS of which it is the manager authorised fund manager, transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the body corporate if:

(a) immediately before the acquisition, the aggregate of any such securities held for that AUT or ACS, taken together with any such securities already held for other AUTs or ACSs, of which it is also the manager authorised fund manager, gives the manager authorised fund manager power significantly to influence the conduct of business of that body corporate; or

(b) the acquisition gives the manager authorised fund manager that power.

(2) For the purpose of (1), a manager an authorised fund manager is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held for all the AUTs or ACSs, of which it is the manager authorised fund manager, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

UCITS schemes that are umbrellas

5.2.30 R (1) In relation to a UCITS scheme which is an umbrella, the provisions in COLL 5.2 to COLL 5.5 apply to each sub-fund as they would for an authorised fund, except the following rules which apply at the level of the umbrella only:

(b) COLL 5.2.28 R (Significant influence for managers authorised fund managers of AUTs or ACSs)
fund managers of AUTs or ACSs);

5.4 Stock lending

Stock lending: requirements

5.4.4 An ICVC, or the depositary at the request of the ICVC, or the manager of an AUT or ACS, 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:

(a) all the terms of the agreement under which securities are to be reacquired by the depositary for the account of the ICVC or by the trustee, AUT or ACS are in a form which is acceptable to the depositary or to the trustee and are in accordance with good market practice;

5.5 Cash, borrowing, lending and other provisions

Application

5.5.1 This section applies to an ICVC, an ACD, a manager of an authorised fund manager of an AUT or ACS, and a depositary of an ICVC, AUT or ACS, and a trustee of an AUT, where such ICVC, or AUT or ACS is a UCITS scheme as set out in COLL 5.5.2R (Table of application).

Table of application

5.5.2 This table belongs to COLL 5.5.1R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Manager of an AUT Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC</th>
<th>Trustee of an AUT Depositary of an AUT or ACS</th>
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</table>

5.6 Investment powers and borrowing limits for non-UCITS retail schemes
Standing independent valuer and valuation

5.6.20 R (1)  The following requirements apply in relation to the appointment of a valuer:

... 

(b) the appointment must be made with the approval of the 

trustee or depositary at the outset and upon any vacancy.

(2) The standing independent valuer in (1) must be:

(a) for an AUT or ACS, independent of the manager authorised fund manager and trustee depositary; and

...

...

6.2 Dealing

...

Purpose

6.2.2 G ...

(2) An authorised fund manager of an AUT, ACS or ICVC is responsible for arranging for the issue and the cancellation of units for the authorised fund. An authorised fund manager of an AUT, ICVC or co-ownership scheme and is permitted to sell and redeem units for its own account. An authorised fund manager of a limited partnership scheme is only permitted to sell and redeem units as agent for the scheme. The rules in this section are intended to ensure that the authorised fund manager treats the authorised fund fairly when arranging for the issue or cancellation of units, and treats clients fairly when they purchase or sell units.

(3) This section also sets out common standards for how the amounts in relation to unit transactions are to be paid. These arrangements include the initial offer of units, the exchange of units for scheme property and issues and cancellations of units by an ICVC, or by the trustee depositary of an AUT or ACS, carried out directly with the unitholder.

...
Issue and cancellation of units in an AUT or ACS

6.2.6 R …

(3) If the trustee depositary is of the opinion that it is not in the interests of unitholders that any units should be issued or cancellation cancelled or that to do so would not be in accordance with the trust deed, contractual scheme deed or prospectus, it must notify the authorised fund manager of that fact and it is then relieved of the obligation to issue or cancel those units.

Issue and cancellation of units through an authorised fund manager

6.2.7 R (1) The authorised fund manager may require, on agreement with the depositary, or may permit, on the request of the investor, direct issues and cancellations of units by an ICVC or by the trustee depositary of an AUT or ACS.

(2) …

Controls over the issue and cancellation of units

6.2.8 R …

(2) An authorised fund manager must not:

(a) for an AUT or ACS, when giving instructions to the trustee depositary for the issue or cancellation of units; or

…

…

Sale and redemption

6.2.16 R …

(10) Paragraphs (4), (5) and COLL 6.3.5AR(2) (Sale and redemption prices for single-priced authorised funds) do not apply where the authorised fund manager of an AUT or ICVC is buying units as principal on an investment exchange (for an AUT in accordance with a power in the trust deed) and settlement will be made in accordance with the rules of that exchange.

…
Limited redemption: guidance

6.2.20 G The conditions for limited redemption arrangements in COLL 6.2.19R should be considered, for AUTs and ACSs as well as for ICVCs, in conjunction with PERG 9 (Meaning of an open-ended investment company) and PERG 9.8 (The investment condition: the ‘expectation test’ (section 236(3)(a) of the Act)).

6.4 Title and registers

Application

6.4.1 R (1) This section applies to a manager an authorised fund manager and a trustee depositary of an AUT or ACS.

(2) ...

Explanation of this section

6.4.3 G (1) This section deals with matters relating to the register of unitholders of units in an AUT or ACS including its establishment and contents. The manager authorised fund manager or trustee depositary may be responsible for the register. In any event, the person responsible for the register must be stated in the trust deed or contractual scheme deed and this section details what his duties are. The provisions relating to documents evidencing title to units, including the issue of bearer certificates are dependent on the provisions in the trust deed or contractual scheme deed and their operation should be set out in the prospectus.

(2) ...

Register: general requirements and contents

6.4.4 R (1) Either:

(a) the manager or the trustee (as nominated in the trust deed);

or

(b) the authorised contractual scheme manager or the depositary of the ACS (as nominated in the contractual scheme deed);

must establish and maintain a register of unitholders as a document in accordance with this section.

(2) The manager or trustee or the authorised fund manager or depositary in accordance with their duties under (1) must exercise
all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.

(3) …

(4) No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager or trustee or the authorised fund manager or depositary, but this does not affect their obligations under COLL 6.4.9R(1) (Plan registers).

(5) …

(6) The person responsible for the register in (1) must:

…

(c) make the register available for inspection free of charge in the United Kingdom by or on behalf of any unitholder (including the manager or authorised fund manager), during office hours, but it may be closed for periods not exceeding 30 business days in any one year;

(d) …

(e) where a unitholder defaults on paying for the issue or sale of units, make an alteration or deletion in the register to compensate for the default after which the manager or authorised fund manager becomes entitled to those units (until those units are either cancelled or re-sold and paid for); and

(f) carry out any conversion of units allowed for by COLL 6.4.8R (Conversion of units) after consultation with the manager or trustee or the authorised fund manager or depositary, as appropriate.

The authorised fund manager as unitholder

6.4.5 R (1) Subject to (3), if no person is entered in the register as the unitholder of a unit, the authorised fund manager must be treated as the unitholder of each such unit which is in issue (other than a unit which is represented by a bearer certificate).

(2) Where units are transferred to the authorised fund manager, they need not be cancelled and the authorised fund manager need not be entered on the register as the new unitholder.

(3) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager
is not entered in the register as the new unitholder.

Transfer of units by act of parties; AUTs and ACSs

6.4.6 R (1) Every unitholder of an AUT is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless:

…

(1A) Provided:

(a) the requirements in COLL 6.4.6AR (Transfer of units in an ACS) are satisfied; and

(b) transfers of units are allowed by the contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules;

every unitholder of an ACS is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by the contractual scheme deed and prospectus.

(2) Every instrument of transfer of units of an AUT or ACS must be signed by, or on behalf of, the unitholder transferring the units (or, for a body corporate, sealed by that body corporate or signed by one of its officers (or in Scotland, two of its officers)) authorised to sign it and, unless the transferee is the manager authorised fund manager, the transferor must be treated as the unitholder until the name of the transferee has been entered in the register.

(3) In the case of an AUT or ACS, every instrument of transfer (stamped as necessary) must be left for registration, with the person responsible for the register, accompanied by:

…

(4) In the case of an AUT or ACS, the details of instruments of transfer must be kept for a period of six years from the date of its registration.

(5) In the case of an AUT or ACS, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.

Transfer of units in an ACS

6.4.6A R (1) Where transfer of units in an ACS is allowed by its contractual scheme deed and prospectus in accordance with the conditions
specified by FCA rules, the authorised contractual scheme manager of the ACS must take reasonable care to ensure that units are only transferred if the conditions specified by the FCA under (2) are met.

(2) The FCA specifies that for the purposes of (1), and for the purposes of COLL 3.2.6R(27G) (ACSs: UCITS and NURS transfer of units) and COLL 4.2.5R(5B) (ACSs: UCITS and NURS transfer of units), units in an ACS may only be transferred to a person that is a:

(a) professional ACS investor; or
(b) large ACS investor; or
(c) person who already holds units in the scheme.

6.4.6B  G  The FCA recognises that some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder, or otherwise) and are accordingly outside the control of the authorised contractual scheme manager. The authorised contractual scheme manager is expected to comply with its responsibilities under COLL 6.6.3BR (Redemption of ACS units by an authorised contractual scheme manager) in such cases by redeeming such units.

Certificates (including bearer certificates)

6.4.7  R  (1) Following the sale of units or as a result of COLL 6.4.6R (Transfer of units by act of parties: AUTs and ACSs) a document recording title to those units may be issued in such a form as the trust deed or contractual scheme deed permits.

...  

(3) Bearer certificates may only be issued for AUTs if they are permitted by the instrument constituting the scheme.

(4) Bearer certificates may not be issued for ACSs.

...

6.5  Appointment and replacement of the authorised fund manager and the depositary

...

6.5.2  R  Table of application

This table belongs to COLL 6.5.1R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other director of an ICVC</th>
<th>Depository of an ICVC</th>
<th>Manager Authorised fund manager of</th>
<th>Trustee Depository of an AUT or ACS</th>
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Retirement of a manager an authorised fund manager of an AUT or ACS

6.5.8 R (1) The manager authorised fund manager of an AUT or ACS has the right to retire in favour of another person eligible under the Act and approved in writing by the trustee depositary upon:

(a) the retiring manager authorised fund manager appointing that person by deed as manager authorised fund manager in its place and assigning to that person all its rights and duties as such manager an authorised fund manager; and

(b) the new manager authorised fund manager entering into such deeds as the trustee depositary reasonably considers necessary or desirable to be entered into by that person in order to secure the due performance of its duties as the manager authorised fund manager of the AUT or ACS.

(2) Upon retirement, the retiring manager authorised fund manager:

(a) subject to (3), is released from all further obligations under the rules in this sourcebook and under the trust deed or contractual scheme deed; and

(b) …

(3) Sub-paragraph (2)(a) does not affect the rights of the trustee depositary or any other person in respect of any act or omission on the part of the retiring manager authorised fund manager before his retirement.

Consequences of removal or retirement of an authorised fund manager of an AUT or ACS

6.5.9 R (1) Upon the removal or retirement of the authorised fund manager, the removed or retiring authorised fund manager of an AUT or ACS:

(a) is entitled to be recorded in the register for those units continued to be held or treated as held by it as principal; and

(b) may require the trustee depositary to issue to it a certificate for those units (if not previously issued).

(2) Paragraph (1) is subject to any restriction in the prospectus relating to the permitted categories of unitholders.
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 or ACS</th>
<th>Trustee Depositary of an AUT or ACS</th>
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Notes

(1) ... 

(2) * COLL 6.6.3AR and COLL 6.6.3BR only apply to authorised contractual scheme managers of ACSs.

(3) * COLL 6.6.5AR and 6.6.5BG only apply to ACDs of ICVCs which are umbrellas and authorised contractual scheme managers of co-ownership schemes which are umbrellas.

(4) * COLL 6.6.15AR has a special application as set out in COLL 6.6.15AR(1).

Functions of the authorised fund manager

6.6.3 R ... 

(3) The authorised fund manager must:

... 

(c) take action immediately to rectify any breach of COLL 6.3
and, where the breach relates to the incorrect pricing of units or to the late payment in respect of the issue of units, the rectification must, (unless the depositary otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of money:

…

(iv) by the manager authorised fund manager to the trustee depositary of the AUT or ACS; or

(v) by the trustee depositary (for the account of the AUT or ACS) to the manager authorised fund manager.

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

6.6.3A R (1) The authorised contractual scheme manager of an authorised contractual scheme which is a UCITS scheme or a non-UCITS retail scheme must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a:

(a) professional ACS investor; or

(b) large ACS investor; or

(c) person who already holds units in the scheme.

(2) The authorised contractual scheme manager of an authorised contractual scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder, unless that person meets the criteria within (1)(a) to (c).

(3) The authorised contractual scheme manager will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Redemption of ACS units by an authorised contractual scheme manager

6.6.3B R The authorised contractual scheme manager of an authorised contractual scheme must redeem units in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in COLL 6.6.3AR(1)(a) to (c).

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

6.6.5A R Where reasonable grounds exist for an ACD of an ICVC or an authorised
contractual scheme manager of a co-ownership scheme which is an umbrella to consider that a foreign law contract entered into by the ICVC or authorised contractual scheme manager on behalf of the co-ownership scheme may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation instrument constituting the scheme of the ICVC or co-ownership scheme (see COLL 3.2.6R(22A) (ICVCs: Umbrella schemes - principle of limited recourse) and COLL 3.2.6R(22B) (Co-ownership schemes: Umbrella schemes - principle of limited recourse)) the ACD or authorised contractual scheme manager of the co-ownership scheme must:

6.6.5B G In deciding what steps are appropriate to remedy the inconsistency, the ACD of an ICVC or the authorised contractual scheme manager of a co-ownership scheme should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

(1) …

(2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

Auditor: AUTs or ACSs

6.6.8 R (1) The manager authorised fund manager of an AUT or ACS must, upon any vacancy for the position of auditor for an AUT or ACS, with the approval of the trustee depositary, appoint as auditor for the AUT or ACS a person qualified for appointment as auditor of an authorised person.

(2) The audit fees of the auditor are determined by the manager authorised fund manager with the approval of the trustee depositary.

(3) The manager authorised fund manager of an AUT or ACS may, with the approval of the trustee depositary, at any time, remove the auditor of an AUT or ACS; this power exists notwithstanding anything in any agreement between the persons concerned.

6.7 Payments

Table of application

6.7.2 R Table of Application. This table belongs to COLL 6.7.1R.
6.7.15 R (1) …

(2) The ICVC, its depositary or the trustee depositary of the ICVC, ACS or AUT as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

6.9 Independence, names and UCITS business restrictions

Independence of depositaries and scheme operators

6.9.2 G (1) Regulation 15(8)(f) of the OEIC Regulations (Requirements for authorisation) requires independence between the depositary, the ICVC and the ICVC’s directors, as does section 243(4) of the Act (Authorisation orders) for the trustee and manager of an AUT, and section 261D(4) of the Act (Authorisation orders) for the depositary and authorised fund manager of an ACS. COLL 6.9.3G to COLL 6.9.5G give the FCA’s view of the meaning of independence of these relationships. An ICVC, its directors and depositary or a manager and a trustee of an AUT or an authorised fund manager and depositary of an ACS are referred to as “relevant parties” in this
Undesirable or misleading names

6.9.6 G (1) Regulation 15(9) of the OEIC Regulations, and section sections 243(8) and 261D(10) of the Act require that an authorised fund’s name must not be undesirable or misleading. This section contains guidance on some specific matters the FCA will consider in determining whether the name of an authorised fund is undesirable or misleading. It is in addition to the requirements of regulation 19 of the OEIC Regulations (Prohibition on certain names).

Connected activities: guidance

6.9.10 G (1) Examples of the connected activities referred to in COLL 6.9.9R(2) include management of group plans, as long as they are dedicated to investments in unit trust schemes, co-ownership schemes, limited partnership schemes and OEICs for which the firm acts as an authorised fund manager.

7.1 Introduction

Application

7.1.1 R (1) This chapter applies to an ICVC, an ACD, any other director of an ICVC, a depositary of an ICVC, an authorised fund manager of an AUT or ACS and a trustee depositary of an AUT or ACS, where such AUT, ACS or ICVC is a UCITS scheme or a non-UCITS retail scheme in accordance with COLL 7.1.2R (Table of application).

Table of application

7.1.2 R This table belongs to COLL 7.1.1R

<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 Authorised fund manager of an AUT or ACS</th>
<th>Trustee Depositary of an AUT or ACS</th>
</tr>
</thead>
</table>

...
7.4* x x
7.4A* x x

Note Notes:
(1) "x" means "applies", but not every paragraph in every rule will necessarily apply.
(2) *COLL 7.4 does not apply to the authorised contractual scheme manager or depositary of an ACS.
(3) *COLL 7.4A does not apply to the manager or depositary of an AUT.

Purpose

7.1.3 G (1) …
(2) This chapter also helps with the statutory objective of protecting consumers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of ICVCs and AUTs and co-ownership schemes. EG 14 (Collective investment schemes) deals with the FCA’s powers to revoke the authorisation of authorised funds otherwise than by consent.

After COLL 7.4 insert the following new section. The text is not underlined.

7.4A Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme

Explanation of COLL 7.4A

7.4A.1 G (1) This section deals with the circumstances and manner in which an ACS is to be wound up or a sub-fund of a co-ownership scheme is to be terminated otherwise than by the court as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (further rules regarding schemes of arrangement are found in COLL 7.6 (Schemes of arrangement)).
(2) An ACS may be wound up under this section only if it is solvent. Under section 261W of the Act (Requests for revocation of authorisation order), the authorised contractual scheme manager or depositary of an ACS may request the FCA to revoke the authorisation order in respect of that ACS. The FCA may then indicate that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to that request. Section 261X of the Act (Directions) gives the FCA the power to make certain directions.
(3) A sub-fund of a co-ownership scheme may be terminated under this section only if it is solvent. The termination of a sub-fund under this section will be subject to section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary).

Termination can only commence once the proposed alterations to the contractual scheme deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of a 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.

(4) An ACS or a sub-fund of a co-ownership scheme may also be wound up or terminated in connection with a scheme of arrangement. The requirements of section 261Q also apply in relation to a proposal that an ACS or a sub-fund of a co-ownership scheme be involved in a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(5) COLL 7.4A.3G gives an overview of the main steps in winding up a solvent ACS or terminating a sub-fund of a co-ownership scheme under FCA rules, assuming FCA approval.

Special meanings in this section

7.4A.2 R (1) In this section, where a sub-fund of a co-ownership scheme is being terminated, references to:

(a) units, are references to units of the class or classes related to the sub-fund to be terminated;

(b) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(c) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and

(d) liabilities, are references to liabilities of the co-ownership scheme allocated or attributable to the sub-fund to be terminated.

(2) In this section:

(a) a “section 261Q case” refers to:

(i) a case where a sub-fund of a co-ownership scheme is to be terminated otherwise than in connection with a scheme of arrangement; or

(ii) a case where an ACS or a sub-fund of a co-ownership scheme...
scheme is to be wound up or terminated in connection with a scheme of arrangement; and

(b) a “section 261W case” refers to a case where an ACS is to be wound up otherwise than in connection with a scheme of arrangement.

Guidance on winding up or termination

7.4A.3 G This table belongs to COLL 7.4A.1G(5) (Explanation of COLL 7.4A)

Summary of the main steps in winding up an ACS or terminating a sub-fund of a co-ownership scheme under FCA rules

Notes: N = Notice to be given to the FCA under section 261Q of the Act in a section 261Q case.

R = Request to wind up the scheme under section 261W of the Act in a section 261W case.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days or R-28 days</td>
<td>7.4A.5R(2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary.</td>
<td>By N + 21 days or by R + 21 days</td>
<td>7.4A.5R(4) and (5)</td>
</tr>
<tr>
<td>3</td>
<td>In a section 261Q case:</td>
<td>N + one month or R + one month</td>
<td>Section 261Q of the Act (in a section 261Q case)</td>
</tr>
<tr>
<td></td>
<td>- the authorised contractual scheme manager receiving FCA approval;</td>
<td></td>
<td>7.4A.4R(3)(c) to (e) (in a section 261W case)</td>
</tr>
</tbody>
</table>
depositary having received from the FCA a warning notice under section 261R in respect of the proposal.

In a section 261W case, the authorised contractual scheme manager or depositary receives an indication from the FCA that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
</tr>
<tr>
<td>5</td>
<td>Depositary to realise and distribute proceeds</td>
<td>ASAP after E</td>
</tr>
<tr>
<td>6</td>
<td>Send annual long report of authorised contractual scheme manager, depositary and auditor to the FCA</td>
<td>Within 4 months of FAP</td>
</tr>
<tr>
<td>7</td>
<td>Request FCA to revoke relevant authorisation order</td>
<td>On completion of W/U</td>
</tr>
</tbody>
</table>

When an ACS is to be wound up or a sub-fund of a co-ownership scheme terminated

7.4A.4 R (1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:
(a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) and COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the units and scheme property in the case of a sub-fund of a co-ownership scheme;

(b) the depositary must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.4A.6R(1) or (2) (Manner of winding up or termination);

(c) the authorised contractual scheme manager must cease to sell and redeem units;

(d) the authorised contractual scheme manager must cease to arrange the issue or cancellation of units under COLL 6.2.7R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4A.6R(1) or (2);

(e) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4R(1) (Register: general requirements and contents); and

(f) the depositary must proceed to wind up the ACS or terminate the sub-fund in accordance with COLL 7.4A.6R.

(2) If the authorised contractual scheme manager has not previously notified unitholders of the proposal to wind up the ACS or terminate the sub-fund of the co-ownership scheme, it 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.

(3) The matters referred to in (1) are:

(a) the authorisation order of the ACS is revoked;

(b) alterations to the co-ownership scheme’s contractual scheme deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act;

(c) the passing of an extraordinary resolution winding up the ACS or terminating the sub-fund, provided the FCA’s prior consent to the resolution has been obtained by the authorised contractual scheme manager or depositary;

(d) in response to a request to the FCA by the authorised contractual scheme manager or the depositary for the
revocation of the authorisation order, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the ACS, the FCA will agree to that request;

(e) the expiration of any period specified in the contractual scheme deed as the period at the end of which the ACS is to be wound up or the sub-fund is to terminate;

(f) the effective date of a duly approved scheme of arrangement, which is to result in the ACS or sub-fund that is subject to the scheme of arrangement being left with no property;

(g) in the case of a co-ownership scheme that is an umbrella, the date on which all or the last of its sub-funds fall within (f) or have otherwise ceased to hold any scheme property, notwithstanding that the co-ownership scheme may have assets and liabilities that are not attributable exclusively to any particular sub-fund.

(4) An ACS must not be wound up nor a sub-fund terminated under this section unless the requirements of both (a) and (b) are satisfied:

(a) An ACS must not be wound up nor a sub-fund terminated under this section unless and until:

(i) in a section 261Q case either:

(A) the FCA has given written approval to the proposal; or

(B) one month has passed since the authorised contractual scheme manager gave notice under section 261Q without the authorised contractual scheme manager or depositary having received from the FCA a warning notice under section 261R in respect of the proposal; or

(ii) in a section 261W case, the FCA indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.

(b) In addition an ACS must not be wound up nor a sub-fund terminated under this section unless a statement has been prepared and sent or delivered to the FCA under COLL 7.4A.5R (Solvency statement) and received by the FCA prior to the satisfaction of the condition in (a).

(5) This rule is without prejudice to:
(a) COLL 7.2.1R (Requirement); or

(b) any order or direction made under section 261X (Directions) or 261Y (Applications to the court) of the Act; or

(c) any alternative method (aside from the rules in this section) of winding up a limited partnership scheme provided for by the law.

Solvency statement

7.4A.5 R (1) Either before notice is given under section 261Q of the Act or before a request is made under section 261W of the Act in relation to the proposals referred to in COLL 7.4A.4R(4), the authorised contractual scheme manager must make a full inquiry into the ACS’s (or, in the case of the termination of a sub-fund of a co-ownership scheme, the sub-fund’s) affairs, business and property to establish whether the ACS or the sub-fund will be able to meet all its liabilities.

(2) The authorised contractual scheme manager must then, based on the results of this enquiry, prepare and sign a statement either:

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

(b) stating that such confirmation cannot be given.

(3) This solvency statement must relate to the ACSs 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 FCA under section 261Q or a request is made under section 261W.

(4) A statement which contains the confirmation under (2) must annex a statement signed by the auditor of the ACS to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with section 261Q of the Act or the request made in accordance with section 261W of the Act.

Manner of winding up or termination

7.4A.6 R (1) Where COLL 7.4A.4R(3)(f) applies, the depositary must cancel all units in issue and wind up the ACS or terminate the sub-fund of the co-ownership scheme in accordance with the approved scheme of arrangement.

(2) In any other case falling within COLL 7.4A.4R:
(a) once the ACS falls to be wound up or sub-fund terminated, the depositary must realise the scheme property;

(b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the depositary must cancel all units in issue and distribute the proceeds of that realisation to the unitholders and the authorised contractual scheme manager proportionately to their respective interests in the ACS or sub-fund as at the date, or the date of the relevant event referred to in COLL 7.4A.4R; and

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the depositary after one year from the date on which they became payable must be paid by the depositary into court (or, in Scotland, as the court may direct), subject to the depositary having a right to retain any expenses properly incurred by him relating to that payment.

(3) For an ACS which is a relevant pension scheme, payments must not be made to unitholders in the ACS. The realisation proceeds must be paid by the depositary in accordance with the contractual scheme deed.

(4) Where the depositary and one or more unitholders agree, the requirement in (2) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those unitholders.

(5) The depositary must distribute the part of the scheme property referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the depositary for ensuring that that or those unitholders bear a proportional share of the liabilities and costs.

(6) On completion of the winding up in respect of the matters referred to in COLL 7.4A.4R(3)(c) to (g), the depositary must notify the FCA in writing and at the same time the authorised contractual scheme manager or depositary must request the FCA to revoke the relevant authorisation order.

7.4A.7 G For the purposes of this section, an ACS may be treated as having been wound up or a sub-fund of a co-ownership scheme terminated upon completion, where relevant, of all of the steps in (1) to (3):

(1) payment or adequate provision being made (by the depositary after consulting the authorised contractual scheme manager) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;
(2) the scheme property being realised or distributed in accordance with COLL 7.4A.6R(5); and

(3) the net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Duty to ascertain liabilities

7.4A.8 R (1) The authorised contractual scheme manager must use all reasonable endeavours to ensure that all the liabilities of the ACS or the sub-fund of a co-ownership scheme are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the authorised contractual scheme manager:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the authorised contractual scheme manager rejects any claim or liability against the ACS or the sub-fund in whole or part, the authorised contractual scheme manager must immediately send to the claimant written notice of its reasons for doing so.

Accounting and reports during winding up or termination

7.4A.9 R (1) For any annual or half-yearly accounting period which begins after commencement of the winding up or termination, the authorised contractual scheme manager is not required to prepare a short report (COLL 4.5.13R (Provision of short report)), provided that it has reasonably determined that the report is not required in the interests of the unitholders.

(2) The authorised contractual scheme manager must consult the depositary before determining that a short report is not required in the interests of unitholders.

(3) Where (1) applies, a copy of the long report must be supplied free of charge to any unitholder upon request.

(4) Where (1) applies, the authorised contractual scheme manager must ensure that it keeps unitholders appropriately informed about the winding up or termination, including its likely duration.

(5) The authorised contractual scheme manager must send a copy of the information required by (4) to each person who was a unitholder or
the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.4A.6R(2)(b).

(6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

(7) Within four months after the end of the final annual accounting period or the termination of the sub-fund of the co-ownership scheme, the annual reports of the authorised contractual scheme manager and depositary must be published and sent to the FCA.

(8) The authorised contractual scheme manager must, on publication of the annual long report in (7), write to each person who was a unitholder or the first named of joint unitholders immediately before the commencement of winding up or termination to inform them that the annual long report is available free of charge on request.

7.4A.10 G (1) The effect of COLL 7.4A.9R(1), if exercised by the authorised contractual scheme manager and depositary, is that the authorised contractual scheme manager must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with COLL 4.5.14R (Publication and availability of annual and half-yearly long report).

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates to unitholders at six-monthly or more frequent intervals.

Liabilities of the authorised contractual scheme manager

7.4A.11 R (1) Except to the extent that the authorised contractual scheme manager can show that it has complied with COLL 7.4A.8R (Duty to ascertain liabilities), the authorised contractual scheme manager is personally liable to meet any liability of an ACS or a sub-fund of a co-ownership scheme, of which it is the authorised contractual scheme manager, wound up or terminated under this section (whether or not the winding up of the ACS or the termination of the sub-fund has been completed) that was not discharged before the completion of the winding up or termination.

(2) Where winding up an ACS, if the proceeds of the realisation of the assets attributable or allocated to a particular sub-fund of an umbrella co-ownership scheme are insufficient to meet the liabilities attributable or allocated to that sub-fund, the authorised contractual scheme manager must pay to the ACS, for the account of that sub-fund, the amount of the deficit, unless and to the extent that the authorised contractual scheme manager can show that the deficit did not arise as a result of any failure by the authorised contractual scheme manager to comply with the rules in COLL.
(3) The liabilities of the **authorised contractual scheme manager** under this rule create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).

(4) The obligations of the **authorised contractual scheme manager** under this rule do not affect any other obligation of the **authorised contractual scheme manager** under these rules or the law.

Miscellaneous

7.4A.12 R If:

(1) during the course, or as a result, of the enquiry referred to in COLL 7.4A.5R(1) (Solvency statement), the **authorised contractual scheme manager** becomes of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

(2) after winding up or termination has commenced, the **authorised contractual scheme manager** becomes of the opinion that the ACS or the sub-fund of a co-ownership scheme will be unable to meet all its liabilities within twelve months of the date of the statement provided under COLL 7.4A.5R(2)(a);

the **authorised contractual scheme manager** must immediately present a petition or cause the ACS or sub-fund to present a petition for the winding up of the ACS or sub-fund as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, as modified by the Contractual Scheme Regulations.

Amend the following as shown.

### 7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

7.5.1 G (1) The **FCA** expects that the majority of requests it will receive for the winding up of an **authorised fund** (under regulation 21(1) of the **OEIC Regulations** or under section sections 256 or 261W of the **Act**) or termination of a sub-fund will be from **authorised fund managers** and depositaries who consider that the **AUT, ACS, ICVC** or sub-fund in question is no longer commercially viable.

...
any additional information or material considered to be relevant to the FCA’s decision under sections 251, 256, 261Q and 261W of the Act or regulation 21 of the OEIC Regulations (as appropriate).

7.6 Schemes of arrangement

Schemes of arrangement: requirements

7.6.2 R …

(6) This paragraph (6) applies if the directors of the ICVC or the manager, authorised fund manager and trustee, depositary of the AUT or ACS agree that the receipt of the property concerned for the account of the ICVC, AUT or ACS:

7.7 UCITS mergers

UCITS Regulations 2011

7.7.6 G …

(2) Firms are advised that they do not need to seek approval from the FCA under section 251 (Alteration of schemes and changes of manager or trustee) or 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act or, as the case may be, regulation 21 (The Authority’s approval for certain changes in respect of a company) of the OEIC Regulations where they are required to obtain the prior approval of the FCA to a proposed merger under regulation 9 of the UCITS Regulations 2011.
Qualified investor schemes: eligible investors

8.1.3  R  (1) Subject to (3), the authorised fund manager of a qualified investor scheme must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that falls into one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Scheme: eligible investors).

(2) The authorised fund manager will be regarded as complying with (1) and (3) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

(3) In addition to (1), the authorised contractual scheme manager of a qualified investor scheme which is an ACS must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that meets the criteria set out in COLL 8 Annex 2R (ACS Qualified Investor Schemes: eligible investors).

Qualified investor schemes - explanation

8.1.4  G  (1) Qualified investor schemes are authorised funds which may only be sold to sophisticated investors. Therefore, the authorised fund manager of an AUT or an ICVC must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to the client types set out in COLL 8 Annex 1R.

(1A) The authorised contractual scheme manager of an ACS must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to the client types set out in both COLL 8 Annex 1R and COLL 8 Annex 2R.

8.2 Constitution

Table: contents of the instrument constituting the scheme

8.2.6  R  This table belongs to COLL 8.2.5R

<table>
<thead>
<tr>
<th>2 Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following statements:</td>
</tr>
<tr>
<td>...</td>
</tr>
</tbody>
</table>
(4) for an ICVC:


---

(b) the unitholders are not liable for the debts of the company; and

---

(4B) for a co-ownership scheme which is an umbrella, the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund;

(4C) for a limited partnership scheme, that the scheme prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the scheme property, with the effect that the scheme cannot be an umbrella;

(5) for an AUT:

---

(d) payments to the trustee by way of remuneration are authorised to be paid (in whole or in part) out of the scheme property;

(6) for an ACS:

(a) the contractual scheme deed:

| (i) | is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland; |
| (ii) | is binding on each unitholder as if he had been a party to it and that he is bound by its provisions; |
| (iii) | authorises and requires the depositary and the authorised contractual scheme manager to do the things required or permitted of them by its terms; and |
| (iv) | states that units may not be issued to a person other than a person that: |

| (A) | is a: |
| (i) | professional ACS investor; |
(ii) large ACS investor; or

(iii) person who already holds units in the scheme; and

(B) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors);

(v) states that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (iv)(A) and (B);

(vi) states that for a co-ownership scheme:

(A) the scheme property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants);

(B) the arrangements constituting the scheme are intended to constitute a co-ownership scheme as defined in section 235A(2) of the Act; and

(C) the operator and depositary are required to wind up the scheme if directed to do so by the FCA in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the Act;

(vii) states:

(A) whether the transfer of units in the ACS scheme or, for a co-ownership scheme which is an umbrella (sub-funds of which pursue differing policies in relation to transfer of units), in each particular sub-fund, is either:

(i) prohibited; or

(ii) allowed;

(B) where transfer of units is allowed by the scheme or, where appropriate the sub-fund, in accordance with (A)(ii), units
may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person that:

<table>
<thead>
<tr>
<th>(i)</th>
<th>is a:</th>
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<tbody>
<tr>
<td>(1)</td>
<td>professional ACS investor; or</td>
</tr>
<tr>
<td>(2)</td>
<td>large ACS investor; or</td>
</tr>
<tr>
<td>(3)</td>
<td>person who already holds units in the scheme; and</td>
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</table>

| (ii) | falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors); and |

(viii) states that for a limited partnership scheme, the scheme is not dissolved on any person ceasing to be a limited partner or nominated partner provided that there remains at least one limited partner;

(b) subject to the provisions of the contractual scheme deed and all the rules made under section 261I of the Act (Contractual scheme rules) and for the time being in force:

(i) the scheme property (other than sums standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and

(ii) the sums standing to the credit of any distribution account are held by the depositary to distribute or apply them in accordance with COLL 8.5.15R (Income); and

(c) a unitholder in a co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds;

(d) a unitholder in a limited partnership scheme is not liable for
the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised contractual scheme manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;

(e) the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business;

(f) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(g) the operator of a co-ownership scheme is authorised to:

(i) acquire, manage and dispose of the scheme property; and

(ii) enter into contracts which are binding on unitholders for the purposes of, or in connection with, the acquisition, management or disposal of scheme property.

...

8.3 Investor relations

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to COLL 8.3.2R

...

2 Description of the authorised fund

Information detailing:

...

(2) that the authorised fund is either an ICVC, ACS or an AUT;

...

(8) where relevant, the maximum and minimum sizes of the ICVC’s capital; and

(9) the circumstances in which the authorised fund may be wound up
under the rules in COLL and a summary of the procedure for, and the rights of unitholders under, such a winding up; and

| (10) | for an ACS that is a **limited partnership scheme**, the address of the proposed principal place of business of the **limited partnership scheme**.

…

### 5A Issue of units in ACSs: eligible investors

#### (1)
A statement that *units* may not be *issued* to a *person* other than to a *person* who:

- **(a)** is a:
  - **(i)** professional ACS investor; or
  - **(ii)** large ACS investor; or
  - **(iii)** person who already holds *units* in the *scheme*; and

- **(b)** falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

#### (2)
A statement that the **authorised contractual scheme manager** of an *ACS* must redeem *units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

### 5B Transfer of units in ACSs

#### (1)
A statement whether the transfer of *units* in the *ACS scheme* is either:

- **(a)** prohibited; or

- **(b)** allowed;

by the *instrument constituting the scheme* and prospectus.

#### (2)
A statement that where transfer of *units* is allowed by the *instrument constituting the scheme and prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by FCA rules, including that *units* may not be transferred to a *person* other than a *person* that:

- **(a)** is a:
  - **(i)** professional ACS investor; or

…
(ii) large ACS investor; or

(iii) person who already holds units in the scheme; and

(b) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

(3) For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.

6 The authorised fund manager

The following particulars of the authorised fund manager:

…

(8) for an AUT or ACS, the names of the directors of the manager authorised fund manager.

…

13 Dealing

Details of:

…

(9) the circumstances in which direct issue or cancellation of units by the ICVC or the trustee depositary of an AUT or ACS (as appropriate) may occur and the relevant procedures for such issues and cancellations; and

…

17 Information on the umbrella

In the case of a scheme which is an umbrella, the following information:

…

(5) for an ICVC or a co-ownership scheme, that:

(a) for an ICVC, 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

| (aa) | for a *co-ownership scheme*, the property subject to a *sub-fund*
is beneficially owned by the *participants* in that *sub-fund* as
tenants in common (or, in Scotland, is the common property
of the *participants* in that *sub-fund*) and must not be used to
discharge any liabilities of, or meet any claims against, any
*person* other than the *participants* in that *sub-fund*; and |

| (b) | for an *ICVC* or a *co-ownership scheme*, while the
provisions of the *OEIC Regulations*, and section 261P
(Segregated liability in relation to umbrella co-ownership
schemes) of the *Act*, in the case of *co-ownership schemes*,
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* or, as the case may
be, section 261P of the *Act*. |

---

18B Information on authorised contractual schemes

A statement that:

1. *a unitholder in a co-ownership scheme* is not liable to make any
   further payment after he has paid the price of his *units* and that no
   further liability can be imposed on him in respect of the *units* he
   holds;

2. *a unitholder in a limited partnership scheme* is not liable for the
debts or obligations of the *limited partnership scheme* beyond the
amount of the *scheme property* which is available to the *authorised
contractual scheme manager* to meet such debts or obligations,
provided that the *unitholder* does not take part in the management of
the partnership business;

3. the exercise of rights conferred on *limited partners* by FCA rules
does not constitute taking part in the management of the partnership
business; and

4. the *scheme property* of a *co-ownership scheme* is beneficially owned
by the *participants* as tenants in common (or, in Scotland, is the
common property of the *participants*).
Any other material information which is within the knowledge of the directors of an ICVC or the manager authorised fund manager of an AUT or ACS, or which the directors of the manager authorised fund manager would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by so participating.

...  

8.5 Powers and responsibilities

...  

Functions of the authorised fund manager

8.5.2 R ...

(3) The authorised fund manager must:

...  

(c) take action immediately to rectify any breach of the pricing methodology set out in the prospectus, which must (unless the authorised fund manager determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:

...  

(iv) by the manager authorised fund manager of the AUT or ACS to the trustee depositary; or

(v) by the trustee depositary (for the account of the AUT or ACS) to the manager authorised fund manager;

...  

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

8.5.3A R Where reasonable grounds exist for an ACD of an ICVC, or an authorised contractual scheme manager of a co-ownership scheme which is an umbrella, to consider that a foreign law contract entered into by the ICVC or authorised contractual scheme manager on behalf of the co-ownership scheme may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation instrument constituting the scheme of the ICVC or co-ownership scheme (see COLL 8.2.6R(2)(4A) and COLL 8.2.6R(2)(4B)), the ACD or authorised contractual scheme...
manager of the co-ownership scheme must:

...

8.5.3B G In deciding what steps are appropriate to remedy the inconsistency, the ACD or authorised contractual scheme manager of the co-ownership scheme should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

1. ...

2. causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

...

The register of unitholders: AUTs or ACSs

8.5.8 R (1) The manager authorised fund manager or the trustee depositary of an AUT or ACS (in accordance with their responsibilities as set out in the instrument constituting the scheme) must maintain a register of unitholders as a document in accordance with this rule.

2. ...

3. The manager authorised fund manager or the trustee depositary of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the register is kept complete and up to date.

4. Where relevant, the manager authorised fund manager must immediately notify the trustee depositary of the AUT or ACS of any information he receives which may affect the accuracy of any entry in the register.

5. In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager is not entered in the register as the new unitholder.

...

Issues and cancellations of units

8.5.10 R (5) The authorised fund manager may arrange for the ICVC, or instruct the trustee depositary of the AUT or ACS to issue or cancel units where the authorised fund manager would otherwise be obliged to sell or redeem the units in the manner set out in the prospectus.
Transfer of units in an ACS

8.5.10B R (1) Where transfer of units in an ACS is allowed by its contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules, the authorised contractual scheme manager of the ACS must take reasonable care to ensure that units are only transferred if the conditions specified by the FCA under (2) are met.

(2) The FCA specifies that for the purposes of (1), and for the purposes of COLL 8.2.6R(2)(6)(a)(vi)(B) (Table: contents of the instrument constituting the scheme) and COLL 8.3.4R(5B)(2) (Table: contents of qualified investor scheme prospectus), units in the ACS may only be transferred to a person that:

(a) is a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
   (iii) person who already holds units in the scheme; and

(b) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

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

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

8.5.10D R (1) The authorised contractual scheme manager of an authorised contractual scheme which is a qualified investor scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder in a qualified investor scheme, unless that person:

(a) is a:
   (i) professional ACS investor; or
   (ii) large ACS investor; or
(iii) person who already holds units in the scheme; and

(b) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

(2) The authorised contractual scheme manager will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

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

8.5.10E R The authorised contractual scheme manager of a qualified investor scheme which is an ACS must redeem units in the scheme as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in COLL 8 Annex 2R (1) and (2) (ACS Qualified Investor Schemes: eligible investors).

8 Annex 1R Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3R and 8.1.4R.

For the purposes of the rule on qualified investors in a qualified investor scheme which is an ACS (COLL 8.1.3R(3)), the authorised contractual scheme manager must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a person who:

(1) is a:

(a) professional ACS investor; or

(b) large ACS investor; or

(c) person who already holds units in the scheme; and

(2) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

11.1 Introduction

Application

11.1.1 R This chapter applies to:
(1) an authorised fund manager of an AUT, ACS or an ICVC;

...

(4) a trustee depositary of an AUT, ACS or a depositary of an ICVC;

where such AUT, ACS or ICVC is a UCITS scheme that is a feeder UCITS or a master UCITS in accordance with COLL 11.1.2R (Table of application).

Table of application

<table>
<thead>
<tr>
<th>Reference</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other directors of an ICVC</th>
<th>Manager Authorised fund manager of an AUT or ACS</th>
<th>Trustee of an AUT or depositary Depositary of an ICVC, AUT or ACS</th>
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...

11.3 Co-ordination and information exchange for master and feeder UCITS

...

Obligations of the master UCITS

...

11.3.10 G Where the FCA is informed in accordance with COLL 11.3.9R that a feeder UCITS which is an EEA UCITS scheme has invested in units of the master UCITS, section 261A and section 261Z4 (Information for home state regulator) of the Act and regulation 29A (Information for home state regulator) of the OEIC Regulations require the FCA to inform the Home State regulator of the feeder UCITS immediately.

[Note: article 66(1) second sentence of the UCITS Directive]

...

11.4 Depositaries

...

Disclosure by a trustee or depositary

11.4.5 G Section 351A (Disclosure under the UCITS directive) of the Act provides that where a trustee of an AUT or the depositary of an ACS which is a master UCITS or a feeder UCITS, or any person acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the UCITS
Directive, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The OEIC Regulations (see regulation 83A) contain corresponding provisions for the depositaries of ICVCs that are feeder UCITS and master UCITS.

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1 G (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the Act, in implementation of article 60 of the UCITS Directive, provide that where a master UCITS is wound up, for whatever reason, the FCA is to direct the manager and trustee of any AUT or the authorised contractual scheme manager and depositary of any ACS which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) …

(b) the FCA approves under section 252A or section 261S (Proposal to convert to a non-feeder UCITS) of the Act an amendment of the trust deed or contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

(2) Section 258A(3) and (4) and section 261Z(3) and (4) of the Act further provide that where a master UCITS merges with another UCITS or is divided into two or more UCITS, the FCA is to direct the manager and trustee of any AUT or the authorised contractual scheme manager and depositary of any ACS which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) …

(b) the FCA approves under section 252A or section 261S of the Act an amendment of the trust deed or contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

11.6.2 R (1) …

(2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the United Kingdom regarding
the compulsory liquidation of AUTs, ACSs or ICVCs.

[Note: article 60(4) last sentence of the UCITS Directive]

... Conditions on reinvestment of cash

11.6.10 R Where:

(1) the FCA approves an application under sections 283A (Master-feeder structures), or 252A or 261S (Proposal to convert to a non-feeder UCITS) of the Act or regulation 22A of the OEIC Regulations that arises as a result of the winding-up, merger or division of the master UCITS (other than an application pursuant to COLL 11.6.5R(1)); and

... COLL 11.6.10R gives effect to sections 283A(4) and 252A(8) and 261S(8) of the Act and regulation 22A(4) of the OEIC Regulations which require the FCA to impose certain conditions when approving the reinvestment of cash received from a master UCITS which has been wound up.

12.1 Introduction

... Purpose

12.1.2 G (1) This chapter contains rules and guidance relating to the operation of the management company passport under the UCITS Directive and explains how the passporting regime applies to:

... (b) an EEA UCITS management company that acts as the manager, authorised fund manager of an AUT, ACS or the ACD of an ICVC that is a UCITS scheme;

... 12.3 EEA UCITS management companies

Application

12.3.1 R This section applies to an EEA UCITS management company that provides collective portfolio management services in the United Kingdom by acting as
the manager authorised fund manager of an AUT, ACS or the ACD of an ICVC which is a UCITS scheme, either by establishing a branch or under the freedom to provide cross border services.

Purpose

12.3.2 G (1) An EEA UCITS management company may be the manager authorised fund manager of an AUT or ACS, or the ACD of an ICVC, that is a UCITS scheme (see SUP 13A (Qualifying for authorisation under the Act)).

(2) An EEA UCITS management company that acts as the manager authorised fund manager of an AUT or ACS, or the ACD of an ICVC, that is a UCITS scheme may conduct its business from a branch in the United Kingdom or under the freedom to provide cross border services (without establishing a branch in the United Kingdom).

12.4 UCITS product passport

Reference to the scheme’s legal form

12.4.7 R For the purpose of pursuing its marketing activities in another Host State, an authorised fund manager of a UCITS scheme may use the same reference to the scheme’s legal form (such as open-ended investment company or investment company with variable capital or authorised unit trust or, for an authorised contractual scheme, either a co-ownership scheme or a limited partnership scheme) in its designation in the Host State as is used in the United Kingdom.

[Note: article 96 of the UCITS Directive]

Schedule 2 Notification requirements

2.1 G

This schedule sets out the notification requirements detailed in COLL in respect only of notifications to be provided to the FCA. These notification requirements, it should be noted, are in addition to the notifications which must be made to the FCA under section 251 of the Act (Alteration of schemes and changes of manager or trustee), section 261Q of the Act (Alteration of contractual schemes and changes of operator or depositary) and under regulation 21 of the OEIC Regulations (The Authority’s approval for certain changes in respect of a company).
### Schedule 6
Rules that can be waived

<table>
<thead>
<tr>
<th>Handbook Reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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<td>...</td>
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<tr>
<td><strong>COLL 7.4A.5R(5)</strong></td>
<td>...</td>
<td>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme (Authorised contractual scheme manager)</td>
<td>Solvency statement</td>
<td>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme</td>
</tr>
<tr>
<td><strong>COLL 7.4A.6R(6)</strong></td>
<td>...</td>
<td>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme (Depositary)</td>
<td>Completion of winding up</td>
<td>Winding up</td>
</tr>
<tr>
<td><strong>COLL 7.4A.9R(7)</strong></td>
<td>...</td>
<td>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme</td>
<td>Annual reports of authorised contractual scheme manager and depositary</td>
<td>End of final accounting period</td>
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6.1 **G**
The rules in **COLL** can be waived by the **FCA** under sections 138A and 138B, or 250 or 261L of the **Act** (Modification or waiver of rules) or regulation 7 of the **OEIC Regulations** (Modification or waiver of FCA)
rules), except \textit{COLL 3.2.8R} (UCITS obligations) and \textit{COLL 6.9.9R} (Restrictions of business for UCITS management companies).
Annex L

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

9 Annex 1R THE MODEL CODE (R)

This annex is referred to in LR 9.2 (Requirements with continuing application) and LR 15 (Investment entities).

R Table: The Model Code

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Dealsings not subject to the provisions of this code</td>
<td>...</td>
</tr>
<tr>
<td>2</td>
<td>The following dealings are not subject to the provisions of this code:</td>
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<tr>
<td>...</td>
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<tr>
<td>(n)</td>
<td>a dealing by a restricted person in the units of an authorised unit trust or authorised contractual scheme or in shares in an open-ended investment company; and</td>
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Appendix 1.1 Relevant definitions

<table>
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<tbody>
<tr>
<td>unrecognised scheme</td>
<td>a collective investment scheme which is neither a recognised scheme nor a scheme that is constituted as an authorised unit trust scheme or an authorised contractual scheme.</td>
</tr>
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<td>...</td>
<td>...</td>
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</table>
Annex M

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text.

5.1 Notification of the acquisition or disposal of major shareholdings

... Certain voting rights to be disregarded (except at 5% 10% and higher thresholds)

5.1.5 R (1) The following are to be disregarded for the purposes of determining whether a person has a notification obligation in accordance with the thresholds in DTR 5.1.2R except at the thresholds of 5% and 10% and above:

... voting rights attaching to shares which may be exercisable by a person in his capacity as the operator of:

... an authorised contractual scheme;

...
Annex N

Amendments to the Enforcement Guide (EG)

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

14 Collective Investment Schemes

Exercise of the powers in respect of Authorised Unit Trust Schemes (AUT) and authorised contractual schemes (ACS): sections 254 (revocation of authorisation order otherwise than by consent), 257 (directions), and 258 (power to apply to court Applications to the court), 261U (Revocation of authorisation order otherwise than by consent), 261X (Directions) and 261Y (Applications to the court) of the Act

14.1 …

(1) The seriousness of the breach or likely breach by a manager or an authorised fund manager or trustee of a requirement imposed by or under the Act. The following may be relevant:

(a) …

(b) the extent of loss, or risk of loss, caused to existing, past or potential participants in the AUT or ACS as a result of the breach;

(c) whether the breach highlights serious or systemic weaknesses in the management or control of either the AUT, ACS or scheme property;

…

(f) whether existing and/or past participants in the AUT or ACS have been misled in a material way, for example about the investment objectives or policy of the scheme or the level of investment risk.

(2) The consequences of a failure to satisfy a requirement for the making of an order authorising an AUT or ACS. The FCA will expect the non-compliance to be resolved as soon as possible. Important factors are likely to be whether existing and/or past participants have suffered loss due to the non-compliance and whether remedial steps will be taken to satisfy all the requirements of the order.

(3) Whether it is necessary to suspend the issue and redemption of units to protect the interests of existing or potential participants in the AUT or ACS. For example, this may be necessary if:

(a) information suggests the current price of units under the AUT or ACS may not accurately reflect the value of scheme property; or
(4) The effect on the interests of participants within the scheme of the use of either or both any of its powers under sections 254, 257, 261U and 261X. However, the FCA will also consider the interests of past and potential participants.

(5) Whether the FCA’s concerns can be resolved by taking enforcement action against the manager authorised fund manager and/or trustee depositary of the AUT or ACS. In some instances, the FCA may consider it appropriate to deal with a breach by a manager an authorised fund manager or trustee depositary by taking direct enforcement action against the manager authorised fund manager and/or trustee depositary without using its powers under sections 254, 257, or 258, 261U, 261X or 261Y. In other instances, the FCA may combine direct enforcement action against a trustee depositary and/or manager authorised fund manager with the use of one or more of the powers under sections 254, 257, and 258, 261U, 261X or 261Y.

(6) Whether there is information to suggest that a trustee depositary or manager authorised fund manager has knowingly or recklessly given the FCA false information. Giving false information is likely to cause very serious concerns, particularly if it shows there is a risk of loss to the scheme property or that participants’ interests have been or may be affected in some other way.

(7) The conduct of the manager authorised fund manager or trustee depositary in relation to, and following the identification of, the issue, for example:

(a) whether the manager authorised fund manager or trustee depositary discovered the issue or problem affecting the AUT or ACS and brought it to the FCA’s attention promptly;

(b) the degree to which the manager authorised fund manager or trustee depositary is willing to cooperate with the FCA’s investigation and to take protective steps, for example by suspending the issue and redemption of units in the AUT or ACS;

(c) whether the manager authorised fund manager or trustee depositary has compensated past and existing participants who have suffered loss.

(8) The compliance history of the trustee depositary or manager authorised fund manager, including whether the FCA has previously taken disciplinary action against the trustee depositary or manager authorised fund manager in relation to the AUT, ACS or any other collective investment scheme.

(9) Whether there is information to suggest that the AUT or ACS is being used for criminal purposes and/or that the manager authorised fund manager or trustee depositary is itself involved in financial crime.

Choice of powers

14.2 The FCA may use its powers under sections 254, 257 and 258 (in the case of
14.3 Where the FCA has a concern about an AUT or ACS that must be dealt with urgently, it will generally use its power to give directions under section 257 (in the case of an AUT) or section 261X (in the case of an ACS) in the first instance.

14.4 The following are examples of situations where the FCA may consider it appropriate to seek a court order under section 258 (in the case of an AUT) or section 261Y (in the case of an ACS) to remove the manager, authorised fund manager or trustee depositary:

(1) Where there are grounds for concern over the behaviour of the manager, authorised fund manager or trustee depositary in respect of the management of the scheme or of its assets.

(2) Where a manager, an authorised fund manager or trustee depositary has breached a requirement imposed on him under the Act or has knowingly or recklessly given the FCA false information.

14.5 The FCA recognises that participants in an AUT or ACS have a direct financial interest in the scheme property. It follows that in cases where it considers it appropriate to use its section 254 power (in the case of an AUT) or its section 261U power (in the case of an ACS) to revoke an authorisation order, the FCA will generally first require the manager, authorised fund manager or trustee depositary to wind up the AUT or ACS (or seek a court order for the appointment of a firm to wind up the AUT or ACS).

15 Disqualification of auditors and actuaries

15.1 Auditors and actuaries fulfil a vital role in the management and conduct of firms, AUTs and ACSs. Provisions of the Act, rules made under the Act and the OEIC Regulations 2000 impose various duties on auditors and actuaries. These duties and the FCA’s power to disqualify auditors and actuaries if they breach them assist the FCA in pursuing its statutory objectives. The FCA’s power to disqualify auditors in breach of duties imposed by trust scheme rules or contractual scheme rules also assists the FCA to achieve these statutory objectives by ensuring that auditors fulfil the duties imposed on them by these rules.
15.4 In cases where the nature of the breach of duties imposed on the auditors and actuaries under the Act (and/or in the case of actuaries imposed by trust scheme rules or contractual scheme rules) is such that the FCA has concerns about the fitness and propriety of an individual auditor or actuary, the FCA will consider whether it is appropriate to make a prohibition order instead of, or in addition to, disqualifying the individual.

Disqualification under section 249 or section 261K

15.7 When deciding whether or not to disqualify an auditor under section 249(1) or section 261K(1) of the Act (concerning the power to disqualify an auditor for breach of trust scheme rules or contractual scheme rules), and in setting the disqualification, the FCA will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

1. the effect of the auditor’s breach of a duty imposed by trust scheme rules or contractual scheme rules: the FCA will regard as particularly serious a breach of a duty imposed by trust scheme rules or contractual scheme rules (set out in COLL 4 (Investor relations) and COLL 7 (Suspension of dealings and termination of authorised funds)) which has resulted in, or is likely to result in, loss to consumers or damage to confidence in the financial system or an increased risk that a firm may be used for the purposes of financial crime;

2. action taken by the auditor to remedy its breach of a duty imposed by trust scheme rules or contractual scheme rules: this may include any steps taken by the auditor to bring the breach to the attention of the FCA promptly, the degree of co-operation with the FCA in relation to any subsequent investigation, and whether any steps have been taken to rectify the breach or prevent a similar breach;

3. action taken by a relevant professional body: The FCA will consider whether any disciplinary action has or will be taken against the auditor by a relevant professional body and whether such action adequately addresses the particular breach of a duty imposed by trust scheme rules or contractual scheme rules;

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19.25 Factors that the FCA may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in EG 14.1 in the context of AUTs or ACSs. However, the relevant conduct will be that of the ICVC, the director or directors of the ICVC and its
depositary. Another difference is that the FCA is also able to take disciplinary action against the ICVC itself since the ICVC will be an authorised person. When choosing which powers to use, the FCA will adopt an approach which is broadly similar to that described in EG 14.2 to 14.5.
Annex O

Amendments to the Perimeter Guidance manual (PERG)

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

2.6 Specified investments: a broad outline

...

2.6.17 G The specified investment category of units in a collective investment scheme includes units in a unit trust scheme or authorised contractual scheme, shares in open-ended investment companies and rights in respect of most limited partnerships and all limited partnership schemes. …

...

2.7 Activities: a broad outline

...

Establishing etc collective investment schemes

...

2.7.13 G In addition, express provision is included in the Regulated Activities Order to make acting as trustee of an authorised unit trust scheme and acting as the depositary of an authorised contractual scheme a regulated activity. The full picture for authorised schemes (that is, schemes that can be promoted to the public) is as follows:

(1) …

(1A) Acting as the depositary of an authorised contractual scheme is expressly included as a regulated activity.

...

(4) …

(4A) Managing an authorised contractual scheme will amount to operating the scheme and so will be a regulated activity. A person acting as the authorised contractual scheme manager is also likely to be carrying on other regulated activities (such as dealing (see PERG 2.7.5G) or managing investments (see PERG 2.7.8G)).

...
2 Annex 2G  Regulated activities and the permission regime

...

2 Table

<table>
<thead>
<tr>
<th>Regulated activity</th>
<th>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</th>
</tr>
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<tbody>
<tr>
<td>...</td>
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</table>

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]

Designated investment business [see notes 1A, 1B and 1C to Table 1]

...[see note 5 to Table 1]

3 Table

Notes to Table 1

Note 1:

...[see note 5 to Table 1]

8.4  Invitation or inducement

...
8.4.9 G Ordinary telephone directory entries which merely list names and contact details (for example where they are grouped together under a heading such as ‘stockbrokers’ will not be inducements. They will be sources of information. Were they to be presented in a promotional manner or accompanied by promotional material they would be capable of being inducements. Even so, they may merely be inducements to make contact with the listed person. Specialist directories such as ones providing details of venture capital providers, unit trust managers, contractual scheme managers or investment trusts will usually carry greater detail about the services or products offered by the listed firms and are often produced by representative bodies. …

…

8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 G ... A regulated collective investment scheme is:

(1) …

(1A) an authorised contractual scheme; or

…

…


(2) The overall effect of the CIS Financial Promotion Order is to ensure that authorised persons are able to promote an unregulated collective investment scheme at least as widely as an unauthorised person is allowed to do under section 21 without needing the approval of an authorised person. In general terms, the order contains exemptions equivalent to those in the Financial Promotion Order which are relevant to units in an unregulated collective investment scheme. Guidance in PERG 8 relating to exemptions in the Financial Promotion Order will apply equally to those exemptions where they appear
in the CIS Financial Promotion Order. The main exception to this relates to the exemption for one-off financial promotions in article 15 of the CIS Financial Promotion Order. That article provides conditions which, if met, are conclusive proof that a financial promotion is one-off. However, these do not include the condition that the identity of the product or service must be determined having regard to the recipient's circumstances (see PERG 8.14.3G(2) and PERG 8.14.4G(2)).

...  

8.33    Introducing

...  

8.33.5  G  In the FCA’s view, article 33 will apply, for example, where persons are finding potential customers for independent financial advisers, advisory stockbrokers or independent investment managers. In this case, the introducer is allowed to receive a payment for making introductions. However, it will not apply where the introductions are made either to a person whose advice or management services would not be independent (for example, a product provider such as a life office or a manager of unit trust schemes or contractual schemes) or for the purposes of execution-only dealing.

...  

9.10    Significance of being an open-ended investment company

...  

9.10.4  G  The restrictions mentioned in PERG 9.10.3G are subject to a number of exemptions. For example, the controls in sections 238 and 240 do not apply to financial promotions about certain kinds of collective investment scheme. These are:

...  

(2)    authorised unit trust schemes; and

(2A)   authorised contractual schemes; and

...  

...  

10.2    General issues

...  

Q4. What kind of investments do these regulated activities relate to?
Securities, such as shares, debt securities, warrants, unit trusts, contractual schemes or rights under a personal pension scheme or a stakeholder pension scheme and contractually based investments such as options, futures and cash-settled instruments (contracts for differences) or long-term insurance policies with an investment element (such as unit-linked insurance or annuities). Some regulated activities, such as arranging and advising on investments, also relate to all contracts of insurance.

10.3 Pension Scheme Trustees

Q8. What decisions can I make, as a trustee of an OPS (other than a small-self administered scheme), if I am not authorised?

You can make:

…

(3) day-to-day decisions about investment in pooled investment products, namely:
   • collective investment schemes such as unit trusts, contractual schemes, limited partnerships, hedge funds or open-ended investment companies;
   …

Q17. When may a decision I make as an OPS trustee that results in my investing in a pooled investment vehicle other than an annuity be regarded as a strategic decision?

This will arise where the decision:
   • represents the initial decision to invest the scheme wholly or to a substantial amount, and on an ongoing basis, in a particular vehicle such as a life policy or unit trust scheme or contractual scheme (on the basis that an initial decision of this kind is of such importance to the scheme that it may be regarded as strategic); or
   …

10.4 Pension scheme service providers other than trustees

Q34. When will regulated activities form a necessary part of my pension administration services so that I can use the exclusion in article 67?
So, the exclusion cannot apply to you if you are providing a service that involves assisting in the conclusion or the administration and performance of contracts of insurance. But it may apply where you are providing other services relating to contracts of insurance (for example, arranging post-conclusion transactions such as surrenders or switches) or to other investments such as shares, unit trusts or contractual schemes.

Q40. I provide administration services to the providers of pension products such as insurers, unit trust managers, contractual scheme managers or banks. Is my position any different to that of a person who provides administration services to pension scheme trustees?

11.2 Guidance on property investment clubs

Q17. What are the consequences of a property investment club being regulated by the FCA?

... The property investment club itself would not be regulated by the FCA as a product in the way that authorised unit trusts, authorised contractual schemes or authorised open-ended investment companies (which are collective investment schemes) are. ...
Q6. We are a UCITS management company that, in addition to managing unit trusts, contractual schemes and investment companies, provides portfolio management services to third parties. How does MiFID apply to us?

…