

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE
(CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2014**

Powers exercised

- 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 73A (Part 6 Rules);
 - (b) section 137A (The FCA’s general rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General);
 - (g) section 247 (Trust scheme rules);
 - (h) section 248 (Scheme particulars rules);
 - (i) section 261I (Contractual scheme rules);
 - (j) section 261J (Contractual scheme particulars rules);
 - (k) section 274 (Application for recognition of individual schemes);
 - (l) section 278 (Rules as to scheme particulars);
 - (m) section 283 (Facilities and information in UK);
 - (n) section 340 (Appointment);
 - (o) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority); and
 - (p) paragraph 19 (Establishment) of schedule 3 (EEA Passport Rights);
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook; and
 - (3) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 2 of Annex B (Glossary) come into force on 1 April 2014;
 - (2) Part 3 of Annex B (Glossary), Part 2 of Annex F (FEES) and Part 2 of Annex H (SUP) come into force on 22 July 2014; and
 - (2) the remainder of this instrument comes into force on 28 February 2014.

Amendments to the FCA 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).

(1)	(2)
Changes to several modules	Annex A
Glossary of definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Supervision manual (SUP)	Annex H
Decision Procedure and Penalties manual (DEPP)	Annex I
Compensation sourcebook (COMP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Listing Rules sourcebook (LR)	Annex L
Energy Market Participants Guide (EMPS)	Annex M
Oil Market Participants Guide (OMPS)	Annex N
Service Companies Guide (SERV)	Annex O

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex P to this instrument.
- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex Q to this instrument.

Notes

- G. In the Annexes 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 Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014.

By order of the Board of the Financial Conduct Authority
27 February 2014

Annex A

Amendments to several modules of the Handbook

In this Annex in the Table (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.

Table: 'Deletions and replacements table'

(1)	(2)	(3)	(4)	(5) Note:
<i>instrument constituting the scheme</i>	<i>instrument constituting the fund</i>	Glossary	<i>bearer certificate</i>	
			<i>execution criteria</i>	Para (e) of definition
			<i>income equalisation</i>	
			<i>qualified investor scheme</i>	Both occurrences, but not italicised in second occurrence
			<i>trust deed</i>	Para (2) of definition
			<i>UCITS scheme</i>	Para (d) of definition
			<i>umbrella</i>	
		COBS	4.13.1R(2)(b)	
			11.2.6R(5)	
		COLL	3.1.2G(1)	Both occurrences, but not italicised in first occurrence
			3.2.2R(1) and (2)	
			3.2.4R	Both occurrences, but not italicised in first occurrence
			3.2.5G(1) and (2)	
			3.2.6R	Both occurrences, but not italicised in first occurrence
			3.3.2G(1)	
			3.3.5R(1) and (2)	
		3.3.8R(1)		

			4.2.5R	All occurrences
			4.3.2G(2)	
			4.4.2R(2)(c)	
			4.4.8R(2)(a)	
			4.4.10R(2)	
			4.5.11R(2)(b)(i)	
			4.5.12R(1)	
			5.2.4R	
			5.2.12R(4)	
			5.2.20R(4)	
			5.5.4R(2)	
			5.5.8R(1)	
			5.6.4R(4)	
			5.6.13R(3)	
			5.7.4R(4)	
			5.8.4R(2)	
			5.8.6R	
			6.1.3G(1)	
			6.2.7R(2)(a)	
			6.2.15R(2)	
			6.2.16R(2) and (3)	
			6.2.19R(1)	
			6.2.21R(1) and (1A)	
			6.3.3R(1)	
			6.3.5R(1)(b)	
			6.4.7R(3)	
			6.6.3R(1)(a)	
			6.6.4R(1)(e)	
			6.6.5R(1) and (2)	
			6.6.5AR	
			6.6.10R(3)	
			6.6.14R(1)	
			6.7.15R(2)(a)	
			6.8.2BR	

		6.8.3AG	
		6.10.2R(1)	
		6.12.12R	
		6 Annex 1R at (1)(b)	
		7.2.2G(2)	
		7.7.7R(2)(h)	
		7.7.9R	
		7.7.18R	
		8.2.2R	
		8.2.5R	
		8.2.6R	All occurrences
		8.2.7R	
		8.3.4R	All occurrences
		8.3.5DR(2)(b)(i)	
		8.3.8R(1)	
		8.4.3R(2)	
		8.4.13R(2)(f)	
		8.5.2R(1)(a)	
		8.5.3AR	
		8.5.4R(2)(i)	
		8.5.7R(2)	
		8.5.8R(1)	
		8.5.9R(4)	
		8.5.11R(1), (2) and (3)	
		9.3.1D(4)(i)	
		9.4.2R(1)(a) and (b)	
		11.2.2R(1)(a)	
		11.3.12R	
		11.4.2R(1)(e)	
		11.4.3R(2)(d) and(e)	
		11.6.3R(1)(b) and (2)(a)	
		11.6.5R(1)(b), (2)(b) and (3)(a)	
		11.6.9R(4)(b)	

			11 Annex 1R	All occurrences
			11 Annex 2 Table at (3)(g)	
			12.3.7G(1)	
			12.4.4R(1)(a)	
			12.4.5R(2)(b)	
Instrument constituting the scheme	Instrument constituting the fund	COLL	3.2 title and sub-headings	All occurrences
			3.3.2G(2)	
			6.2.5R(1)	
			All sub-titles in Section 8.2	
			8.5.10BR(2)	

Annex B

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 28 February 2014

Amend the following definitions as shown.

<i>agreeing to carry on a regulated activity</i>	<p>the <i>regulated activity</i>, specified in article 64 of the <i>Regulated Activities Order</i> (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:</p> <p>...</p> <p>(c) <i>carrying out contracts of insurance;</i></p> <p><u>(ca) <i>managing a UCITS;</i></u></p> <p><u>(cb) <i>acting as trustee or depositary of a UCITS;</i></u></p> <p><u>(cc) <i>managing an AIF;</i></u></p> <p><u>(cd) <i>acting as trustee or depositary of an AIF;</i></u></p> <p>...</p>
<i>CIS administrator</i>	<p>(in relation to <i>firm type</i> in SUP 16.10 (Confirmation of standing data)) a person responsible for the administrative functions of a collective investment scheme. [deleted]</p>
<i>CIS trustee</i>	<p>(in relation to <i>firm type</i> in SUP 16.10 (Confirmation of standing data)) a person holding the property of a collective investment scheme on trust for the participants in the collective investment scheme. [deleted]</p>
<i>counterparty</i>	<p>(1) (in UPRU) any person with or for whom a firm carries on designated investment business or an ancillary activity. [deleted]</p> <p>...</p>
<i>energy market activity</i>	<p>...</p> <p>(b) <i>establishing, operating or winding up a collective investment scheme which is an energy collective</i></p>

	investment scheme in which retail clients do not participate. [deleted]
<i>Enterprise Zone Property Unit Trust</i>	an unregulated collective investment scheme of which the underlying assets are industrial and commercial buildings in an Enterprise Zone in accordance with section 749(2) of the Finance Act 1980. [deleted]
<i>EZPUT</i>	Enterprise Zone Property Unit Trust. [deleted]
<i>oil market activity</i>	<p>(a) any regulated activity in relation to an oil investment or to oil, or in relation to a biofuel investment, biofuel, a biomass investment or biomass that is ancillary to activities related to oil investments or oil, which:</p> <p>...</p> <p>(ii) if it is not the executing of transactions on such exchanges, is performed in connection with or for persons who are not individuals; and</p> <p>(b) establishing, operating or winding up a collective investment scheme which is an oil collective investment scheme in which individuals do not participate. [deleted]</p>
<i>overseas person</i>	<p>(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) a person who:</p> <p>(a) carries on any of the following regulated activities:</p> <p>...</p> <p>(x) causing dematerialised instructions to be sent;</p> <p>(xa) <u>managing a UCITS;</u></p> <p>(xb) <u>acting as trustee or depositary of a UCITS;</u></p> <p>(xc) <u>managing an AIF;</u></p> <p>(xd) <u>acting as trustee or depositary of an AIF;</u></p> <p>...</p>
<i>recognised scheme</i>	<p>a scheme recognised under:</p> <p>...</p> <p>(b) section 270 of the Act (Schemes authorised in designated countries or territories); or [deleted]</p>

	...
<i>relevant transitional complaint</i>	(in accordance with the <i>Mortgage and General Insurance Complaints Transitional Order</i>) a complaint referred to the <i>Financial Ombudsman Service</i> after the <i>relevant commencement date</i> which relates to an act or omission occurring before that date if:
	...
	(d) the complainant is eligible and wishes to have the complaint dealt with under the new <i>scheme</i> <u><i>scheme</i></u> .
<i>respondent</i>	(1) (in <i>DISP</i> , <i>FEES</i> 5 and <i>CREDS</i> 9) a firm (except <u>an <i>AIFM</i> qualifier or a <i>UCITS</i> qualifier</u>), <i>payment service provider</i> , <i>electronic money issuer</i> , <i>licensee</i> or <i>VJ participant</i> covered by the <i>Compulsory Jurisdiction</i> , <i>Consumer Credit Jurisdiction</i> or <i>Voluntary Jurisdiction</i> of the <i>Financial Ombudsman Service</i> .
	...
<i>scheme holding</i>	a holding of:
	(a) <i>units in a collective investment scheme; or</i>
	(b) <i>shares in an investment trust savings scheme.</i> [deleted]
<i>UCITS firm</i>	a firm which:
	(a) is a <i>management company</i> , including where in addition the firm is also an <i>AIFM</i> (<u>whether or not it is also the <i>manager</i> of <i>AIFs</i> or the <i>operator</i> of other <i>collective investment schemes</i></u>); and
	...
<i>UCITS investment firm</i>	a firm which:
	(a) is a <i>management company</i> (whether or not it is also the <u><i>manager</i> of <i>AIFs</i> or the operator <i>operator</i> of other <i>collective investment schemes</i></u>); and
	...
<i>venture capital business</i>	the business of carrying on any of:
	...
	(b) <i>advising on investments</i> or <i>managing investments</i> in relation to portfolios, or <i>establishing, operating or winding up collective investment schemes</i> <u>or <i>managing</i></u>

AIFs, where the portfolios or *collective investment schemes funds* (apart from funds awaiting investment) invest only in *venture capital investments*;

...

wholesale depositor

~~a person who is:~~

- ~~(a) a credit institution; or~~
- ~~(b) a large company; or~~
- ~~(c) a large mutual association which is:

 - ~~(i) a firm; or~~
 - ~~(ii) an overseas financial services institution; or~~
 - ~~(iii) a collective investment scheme or an operator or trustee of a collective investment scheme; or~~
 - ~~(iv) a pension or retirement fund, or a trustee of such a fund (except a trustee of a small self-administered scheme or an occupational scheme of an employer which is not a large company or a large partnership); or~~~~
- ~~(d) a supranational institution, government or central administrative authority; or~~
- ~~(e) a provincial, regional, local or municipal authority; or~~
- ~~(f) a body corporate in the same group as the person with whom the deposit is made. [deleted]~~

wholesale only bank

~~(in relation to firm type in SUP 16.10 (Confirmation of standing data)) a bank with permission to accept deposits from wholesale depositors only. [deleted]~~

Part 2: Comes into force on 1 April 2014

regulated activity

...

- (na) managing a UCITS (article 51ZA);
- (nb) acting as trustee or depositary of a UCITS (article 51ZB);
- (nc) managing an AIF (article 51ZC);

(nd) acting as trustee or depositary of an AIF (article 51ZD);

(ne) establishing, operating or winding up a collective investment scheme (article 51ZE);

...

which is carried on by way of business and, and expect for (ta) and (tb) relates to a *specified investment* applicable to that activity or, in the case of (l), (m), ~~(ma)~~, (n), ~~(na)~~, ~~(nb)~~, ~~(nc)~~, ~~(nd)~~, ~~(ne)~~ and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing.

Part 3: Comes into force on 22 July 2014

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. [deleted]~~

acting as the depositary or sole director of an open-ended investment company ~~the regulated activity, specified in article 51(1)(c) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as the depositary or sole director of an open-ended investment company. [deleted]~~

acting as trustee of an authorised unit trust scheme ~~the regulated activity, specified in article 51(1)(b) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as a trustee of an authorised unit trust scheme. [deleted]~~

agreeing 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 or Part 3A of that Order other than:

...

(e) ~~acting as trustee of an authorised unit trust scheme; [deleted]~~

(f) ~~acting as the depositary or sole director of an open-ended investment company; [deleted]~~

(ff) ~~acting as the depositary of an authorised contractual scheme; [deleted]~~

Annual Accounts

...

	(2) (in UPRU) accounts prepared to comply with:
	(a) the Companies Acts 1985 to 1989, and their equivalent in Northern Ireland, where these provisions are applicable; or
	(b) the Companies Act 2006; or
	(c) other statutory obligations. [deleted]
<i>annual audited fixed expenditure</i>	(in UPRU) has the meaning given in UPRU 2.1.3R (Annual audited fixed expenditure). [deleted]
<i>client money</i>	...
	(4) (in UPRU and COMP) client money for the purposes of the relevant <i>client money rules</i>.
<i>client money rules</i>	...
	(3) (in CASS 3, CASS 6, CASS 7, CASS 7A, UPRU and COBS) CASS 7.1 to 7.8.
<i>establishing, operating or winding up a regulated collective investment scheme</i>	establishing, operating or winding up a collective investment scheme if the scheme is a regulated collective investment scheme. [deleted]
<i>establishing, operating or winding up an unregulated collective investment scheme</i>	establishing, operating or winding up a collective investment scheme if the scheme is an unregulated collective investment scheme. [deleted]
<i>financial resources</i>	(in UPRU) the financial resources calculated in accordance with UPRU 2.2.1R (Financial resources) that a UCITS firm needs to meet its <i>financial resources requirement</i>. [deleted]
<i>financial resources requirement</i>	(in UPRU) has the meaning given in UPRU 2.1.2R. [deleted]
<i>financial return</i>	(in UPRU) means <i>annual financial return, quarterly financial return or monthly financial return</i> as the case may be. [deleted]
<i>funds under management</i>	(1) (in UPRU)
	(a) <i>collective investment schemes other than OEICs managed by the firm including schemes where it has delegated the management function but excluding schemes that it is managing as delegate; and</i>
	(b) <i>OEICs for which the firm is the designated</i>

		management company: <u>[deleted]</u>
<i>initial capital</i>	...	
	(3)	(in UPRU and in accordance with article 28(1) of the CRD) the amount of own funds referred to in article 26(1)(a) to (e) of the EU CRR and calculated in accordance with Part Two of those Regulations (Own funds): <u>[deleted]</u>
	...	
<i>investment management firm</i>	...	
	(c)	...
	(ii)	...
	(C)	acting as the manager or trustee of an AUT; <u>[deleted]</u>
	...	
	(D)	acting as the ACD or depositary of an ICVC; <u>[deleted]</u>
	(Da)	acting as the authorised contractual scheme manager or depositary of an ACS; <u>[deleted]</u>
	(E)	establishing, operating or winding up a collective investment scheme (other than an AUT, ICVC or ACS);
	...	
<i>monthly financial return</i>		(in UPRU) means the return referred to in SUP. <u>[deleted]</u>
<i>overseas person</i>		(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) a person who:
	(a)	carries on any of the following <i>regulated activities</i> :
	...	
	(xii)	acting as trustee of an authorised unit trust scheme; <u>[deleted]</u>
	(xiii)	acting as the depositary or sole director of an open-ended investment company; <u>[deleted]</u>

	(xiiia) acting as the depositary of an authorised contractual scheme; [deleted]
	...
<i>own funds</i>	...
	(4) (in UPRU) has the meaning in article 4(1)(118) of the EU-CRR. [deleted]
<i>participation</i>	(1) (for the purposes of UPRU and GENPRU (except GENPRU 3) and for the purposes of BIPRU (except BIPRU 12) and INSPRU as they apply on a consolidated basis):
	...
	...
<i>permitted business</i>	(in UPRU) means permitted activity. [deleted]
<i>qualifying undertaking</i>	(in UPRU) has the meaning given in IPRU(INV) 5.2.6(3) (Qualifying undertakings). [deleted]
<i>quarterly financial return</i>	(in UPRU) means the return referred to in SUP. [deleted]
<i>regulated activity</i>	...
	(1) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); for the purposes of the permission regime, this is sub-divided into:
	(i) establishing, operating or winding up a regulated collective investment scheme;
	(ii) establishing, operating or winding up an unregulated collective investment scheme; [deleted]
	(m) acting as trustee of an authorised unit trust scheme (article 51(1)(b)); [deleted]
	(ma) acting as the depositary of an authorised contractual scheme (article 51(1)(bb)); [deleted]
	(n) acting as the depositary or sole director of an open-ended investment company (article 51(1)(e)); [deleted]
	...

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case

of ~~(l), (m), (ma), (n),~~ (na), (nb), (nc), (nd), (ne) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing.

trading book

- (1) ~~(in UPRU) in relation to a firm's business or exposures means:~~
- ~~(a) its proprietary positions in financial instruments:

 - ~~(i) which are held for resale and/or are taken on by the firm with the intention of benefiting in the short term from actual and/or trading book expected differences between their buying and selling prices or from other price or interest rate variations;~~
 - ~~(ii) arising from matched principal broking;~~
 - ~~(iii) taken in order to hedge other elements of the trading book;~~~~
 - ~~(b) exposures due to unsettled securities transactions, free deliveries, OTC derivative instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and~~
 - ~~(c) fees, commission, interest and dividends, and margin on exchange traded derivatives which are directly related to the items included in (a) and (b) above. [deleted]~~

...

UPRU

~~the Prudential sourcebook for UCITS Firms. [deleted]~~

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

...

1 Annex Detailed application of SYSC

1

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)		
	Who?		
...			
2.4	...		
<u>2.4A</u>	<u>R</u>	<u>For an AIFM qualifier:</u>	
		(1)	<u>the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and</u>
		(2)	<u>the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1, 2.12R.</u>
...			

Annex D

Amendments to the Threshold Conditions sourcebook (COND)

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

2 The threshold conditions

...

2.2 Location of offices

...

2.2.1A UK (1) Unless sub-paragraph (3), ~~or (4)(a) or (7)~~ applies, if A is a body incorporated in the United Kingdom -

...

...

(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.

...

2.2.2 G ~~Paragraphs Paragraph 2B(1) of Schedule 6 to the Act implements article 7(1)(d) of the UCITS Directive, paragraphs 2B(1) and to 2B(23) of Schedule 6 to the Act, implement the requirements of article 6 of the Post BCCI Directive and article 5(4) of MiFID, and the threshold condition set out in paragraph 2B(4) of Schedule 6 to the Act implements article 2.9 of the Insurance Mediation Directive and paragraph 2B(7) of Schedule 6 to the Act implements article 8(1)(e) of AIFMD, although the Act extends the threshold condition set out in paragraph 2B of Schedule 6 of the Act to firms which authorised persons that are not PRA-authorised persons who are outside the scope of the these Single Market Directives and the UCITS Directive.~~

2.2.3 G Neither the ~~Post BCCI Directive~~ UCITS Directive, MiFID, the Insurance Mediation Directive, AIFMD nor the Act define what is meant by a firm's 'head office'...

...

2.3 Effective supervision

...

- 2.3.2 G Paragraphs 2C and 3B of Schedule 6 to the *Act* implements requirements of the ~~*Post-BCCI Directive*~~ *Single Market Directives*, but the *Act* extends this condition to *firms* from outside the *EEA* and other *firms* which are outside the scope of the *Single Market Directives* ~~and the *UCITS Directive*~~.

...

Annex E

Amendments to the General Provisions (GEN)

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

Sch 4 Powers exercised

...

Powers to direct, require or specify

Sch 4.7	G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> in <i>GEN</i> to direct, require or specify:
		...
		Section 270(6)(b) (Schemes authorised in designated countries or territories)
		...
		Regulations 7(3) and (4) (Modification or waiver of FSA <u>FCA</u> rules) and 12 (Application for authorisation) of the <i>OEIC Regulations</i> .

Annex F

Amendments to the Fees manual (FEES)

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

Part 1: Comes into force on 28 February 2014

1 Fees Manual

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

...

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

...

(d) every *person* who, under the constitution or founding arrangements of a ~~recognised scheme~~ recognised scheme, is responsible for the management of the property held for or within the *scheme*;

...

...

...

3 Application, Notification and Vetting Fees

3.1 Introduction

...

Purpose

...

3.1.5A G The fees for ~~collective investment schemes~~ funds reflect the estimated costs to the *FCA* of assessing applications and notifications. The level of fees payable in respect of an application or a notification will vary depending

upon the provision of the *Act* under which it is made. This fee is adjusted when the *scheme* concerned is an *umbrella*.

...

4 Periodic fees

...

4 Annex 1AR FCA Activity groups, tariff bases and valuation dates

Part 1

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*.

Activity group	Fee payer falls in the activity group if
...	...
<p>A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes</p>	<p>(1) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>...</p> <p><i>acting as trustee or depositary of a UCITS;</i></p> <p><u><i>establishing, operating or winding up a collective investment scheme;</i></u></p> <p>...</p>
<p>A.10 Firms dealing as principal</p>	<p>its <i>permission</i> includes:</p> <p>(a) <i>dealing in investments as principal</i>; and/or</p> <p>(b) <i>bidding in emissions auctions</i>;</p> <p>BUT NOT if one of the following apply:</p> <p>...</p> <p>the above activity is limited either to <i>acting as an operator of a collective investment scheme</i>, <u><i>establishing, operating or winding up a collective investment scheme</i></u>, <i>establishing, operating or winding up a personal pension scheme</i> or a <i>stakeholder pension scheme</i>, or to carrying out <i>trustee</i> <u><i>depositary</i></u> activities;</p> <p>...</p>

<p>A.12 Advisors, arrangers, dealers or brokers (holding or controlling client money or assets, or both)</p>	<p>...</p> <p>(d) PROVIDED the fee-payer is NOT any of the following:</p> <p>...</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to carrying out <i>venture capital business</i>;</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to acting as an operator of a regulated collective investment scheme <u>a residual CIS operator</u>;</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to carrying out trustee activities <u>acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS</u>;</p> <p>...</p>
<p>A.13 Advisors, arrangers, dealers or brokers (not holding or controlling client money or assets, or both)</p>	<p>...</p> <p>(d) PROVIDED the fee-payer is NOT any of the following:</p> <p>...</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to carrying out <i>venture capital business</i>;</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to acting as an operator of a regulated collective investment scheme <u>a residual CIS operator</u>;</p> <p>a firm whose <u>for whom all the applicable activities above</u> are limited to carrying out trustee activities <u>acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS</u>;</p> <p>...</p>
<p>...</p>	<p>...</p>

...

6 Financial Services Compensation Scheme Funding

...

6 Annex 3AR Financial Services Compensation Scheme – classes

This table belongs to *FEES* 6.4.7AR and *FEES* 6.5.6AR

...

	Investment
Class D1	Investment provision
Firms with <i>permission</i> for:	Any of the following:
	...
	<i>acting as trustee or depositary of a UCITS;</i>
	<u><i>establishing, operating or winding up a collective investment scheme;</i></u>
	...

...

Part 2: Comes into force on 22 July 2014

4 Periodic fees

...

4 Annex 1AR FCA Activity groups, tariff bases and valuation dates

Part 1
 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*.

Activity group	Fee payer falls in the activity group if
...	...
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	(1) its <i>permission</i> : (a) includes one or more of the following: ... <i>establishing, operating or winding up a regulated collective investment scheme;</i> <i>establishing, operating or winding up an unregulated collective investment scheme;</i> <i>acting as trustee of an authorised unit trust scheme;</i>

	<p><i>acting as the depositary of an authorised contractual scheme;</i></p> <p><i>acting as the depositary or sole director of an open-ended investment company;</i></p> <p>...</p>
--	---

...

6 Financial Services Compensation Scheme Funding

...

6 Annex 3AR Financial Services Compensation Scheme – classes

This table belongs to FEES 6.4.7AR and FEES 6.5.6AR

...

	Investment
Class D1	Investment provision
Firms with <i>permission</i> for:	Any of the following:
	...
	<i>establishing, operating or winding up a regulated collective investment scheme;</i>
	<i>establishing, operating or winding up an unregulated collective investment scheme;</i>
	<i>acting as trustee of an authorised unit trust scheme;</i>
	<i>acting as the depositary of an authorised contractual scheme;</i>
	<i>acting as the depositary or sole director of an open-ended investment company;</i>
	...

...

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

...

1 Annex 1 Application (see COBS 1.1.2R)

...

Part 3: Guidance

...

9. UCITS Directive: effect on territorial scope

...

9.1D G *EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS* 18.5 (~~Operators of collective investment schemes~~ Residual CIS operators, UCITS management companies and AIFMs).

...

10. AIFMD: effect on territorial scope

...

10.4 G *Incoming EEA AIFM branches* should be aware that there is a special narrower application of *COBS* for *AIFM investment management functions* provided for by *COBS* 18.5 (Residual CIS operators, UCITS management companies and AIFMs).

...

5 Distance communications

5.1 The distance marketing disclosure rules

...

5.1.10 G In this section:

...

- (3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The subscription to new *units* of the same ~~*collective investment scheme fund*~~ is considered to be one of 'successive operations of the same nature'.

...

11 Dealing and managing

...

11.6 Use of dealing commission

...

Application

...

11.6.2A G *COBS 11.6.3R applies to a full-scope UK AIFM that is an internally managed AIF in accordance with the modification in COBS 18.5.4CR.*

...

11.8 Recording telephone conversations and electronic communications

Application – Who?

...

11.8.2 R This section does not apply to the carrying on of the following activities:

- (1) activities carried on between ~~operators~~ *operators*, or between ~~operators~~ *operators* and ~~depositories~~ *depositories*, of the same ~~*collective investment scheme fund*~~ (when acting in that capacity);

...

...

16 Reporting information to clients

...

16 Trade confirmation and periodic information

**Annex
1R**

This annex forms part of *COBS* 16.2.1R

	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with <i>SUP</i> 17 Annex 1	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
...			
13.	a total sum of the commissions and expenses charged (for a <i>€IS collective investment scheme operator</i> , initial charges may be disclosed in cash or percentage terms) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i>;	...	...
...			

...

18 Specialist Regimes

...

18.5 Residual CIS operators, UCITS management companies and AIFMs

Application

...

- 18.5.1B** R Only COBS 18.5.1R to COBS 18.5.4AR, COBS 18.5.4CR to COBS 18.5.4DG and COBS 18.5.10AR apply to a full-scope UK AIFM, with the exception that COBS 18.5.10AR does not apply to a full-scope UK AIFM of an unauthorised AIF which is not a collective investment scheme. COBS 18.5.4CR to COBS 18.5.4DG only apply to a full-scope UK AIFM that is an internally managed AIF.

Application or modification of general COBS rules

...

- 18.5.2-A** G For activities carried on by *firms* which are not *scheme management activities* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the *general application rule*, as modified in *COBS 1 Annex 1*.

Table: Application of conduct of business rules

This table belongs to COBS 18.5.2R

Chapter, section, rule	<i>Full-scope UK AIFM</i>	<i>Small authorised UK AIFM and a residual CIS operator</i>	<i>Incoming EEA AIFM branch</i>	<i>UCITS management company</i>
...				
11.6	Applies, <u>but as modified by COBS 18.5.4CR for internally managed AIFs.</u>	...	...	...
18.5	Applies <u>as modified by COBS 18.5.1BR</u>	...	...	...

...				
-----	--	--	--	--

...

Modification of dealing commission rules for internally managed AIFs

18.5.4C R Only *COBS 11.6.1G to COBS 11.6.11G* apply to a *full-scope UK AIFM* that is an *internally managed AIF* and references to an *investment manager in COBS 11.6* are to be read as including an *internally managed AIF* which manages *designated investments* on its own account and references to a *customer order* as a decision by an *internally managed AIF* to execute a transaction for these purposes.

18.5.4D G To be an *investment manager*, a person needs to manage *designated investments* on a discretionary or non-discretionary basis under the terms of a management agreement. The purpose of *COBS 18.5.4CR* is to modify *COBS 11.6.1G to COBS 11.6.11G* so that these provisions apply to a *full-scope UK AIFM* that is an *internally managed AIF* because such *firms* manage *designated investments* on their own account rather than under the terms of a management agreement.

...

...

Sch 1 Record keeping requirements

...

Sch 1.3	G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	
		<i>COBS 18.5.14R</i>	Collective investment scheme operators <i>Residual CIS operators and small authorised UK AIFMs of an unauthorised AIF</i>	<i>Periodic statement to be provided to participants</i>	When provided	3 years
	

...

Annex H

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 28 February 2014

2 Information gathering by the FSA appropriate regulator on its own initiative

2.1 Application and purpose

...

- 2.1.3 G Achieving the *regulatory objectives* involves the *FCA* informing itself of developments in *firms* and in markets. The *Act* requires the *FCA* to ~~monitor a firm's compliance with requirements imposed by or under the Act, or by any directly applicable Community regulation or decision made under MiFID or the UCITS Directive or the auction regulation~~ (paragraph 6(1) of ~~Schedule 1~~) maintain arrangements for supervising authorised persons (section 1L(1)). The *Act* also requires the *FCA* to take certain steps to cooperate with other relevant bodies and regulators (section 354A)...

...

3 Auditors

3.1 Application

...

- 3.1.2 R Applicable sections (see SUP 3.1.1R)

	(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(7)	<i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm),2 or securities and futures firm (other than an exempt CAD firm or an exempt BIPRU</i>	...	...

	<i>commodities firm) or collective portfolio management firm that is an external AIFM which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3 and 6)</i>		
(7A)	<i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm), or securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm) or collective portfolio management firm that is an external AIFM not within (7) to which the custody chapter or client money chapter applies</i>	...	...
...			
(7B)	<i>Collective portfolio management firm that is a UCITS firm or an internally managed AIF (Note 6)</i>	...	...
...			
<p>Note 6 = Where SUP 3.11 applies to a firm, and SUP 3.10 applies to the auditor of that firm, those sections apply whether or not that firm's permission prevents it from holding client money or custody assets and whether or not it holds client money or custody assets. <u>A collective portfolio management firm that is an internally managed AIF is required to appoint an auditor under FUND 3.3.6R(2) (Annual report of an AIF) because the AIFM is also an AIF.</u></p>			

...

Material elsewhere in the Handbook

- 3.1.9 G A firm which is a ~~friendly society or other insurer, investment management firm, personal investment firm or a securities and futures firm~~ mentioned in SUP 3.1.10G should see the Prudential Standards part of the Handbook for further provisions on auditors as set out in SUP 3.1.10G. ~~For the~~

categorisations employed in SUP 3.1.2R and SUP 3.1.10G see SUP App 1.

3.1.10 G Other relevant sections of the Handbook (see SUP 3.1.9G)

...	
<i>Investment management firm, personal investment firm, securities and futures firm and collective portfolio management firm</i> (other than BIPRU investment firms)	IPRU(INV)
...	

...

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6 Annex 4 Additional guidance for a firm winding down (running off) its business

...

6 Annex 4.5G

...
<p>Holding funds on trust</p> <p>7. In some circumstances, it may be appropriate for the <i>firm</i> to make an irrevocable transfer of funds, at least equal to the total of its <i>deposits</i>, to an independent trustee <u>trustee</u> to be held on trust <u>trust</u> for the benefit of the depositors...</p>
<p>8. ...</p> <p>(2) The trustee <u>trustee</u> should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the <i>appropriate regulator</i>.</p> <p>(a) The trustee <u>trustee</u> should usually be a major <i>UK bank</i>...</p>
...

...

8 Waiver and modification of rules

8.1 Application and purpose

...

8.1.1-A R This chapter applies to every:

...

- (2) *person*, as respects a particular *AUT*, *ACS* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules* in *COLL*.

...

13 Exercise of passport rights by UK firms

...

13 Annex 1R Passporting: Notification of intention to establish a branch in another EEA state



Passporting

Notification of intention to establish a branch in another EEA state (excluding the Payment Services Directive and Electronic Money Directive)

...

10.2 Please give details of the firm's programme of operations.

Note to Question 10.2

Provide a programme of operations stating in particular the services which the *AIFM* intends to perform and the organisational structure of the *branch*.

Please also identify the *AIFs* that the *AIFM* intends to manage and the domiciles of these *AIFs*. If any of these *AIFs* will be established in a different *EEA State* to the *branch*, please provide the address in the *Home State* of the *AIF* from which documents may be obtained.

For a suggested template firms may adhere to the template provided in section 3.3 when preparing a programme of

...

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

...

13A.1.3 G ...

(2) Gibraltar insurance companies, *credit institutions, insurance intermediaries, and investment firms and management companies* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures...

...

13A.3 Qualifications for authorisation under the Act

...

13A.3.13 G A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the *Act*, to carry on, as far as is appropriate to the capacity in which it acts in relation to the ~~scheme~~ scheme:

...

(2) any activity in connection with, or for the purposes of, the ~~scheme~~ scheme (including the *regulated activity of managing a UCITS*).

...

13A Application of the Handbook to Incoming EEA firms

Annex

1G

...		
(1) Module of Handbook	(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	(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
...		
<i>SUP</i>	...	

	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(b) a <i>depository</i> of an <i>ICVC</i>; or</p> <p>...</p> <p>(d) a <i>trustee</i> of an <i>AUT</i>; or</p> <p>(da) a <i>depository</i> of an <i>ACS</i>; or</p> <p>...</p>	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(a) a <i>depository</i> of an <i>ICVC</i>; or</p> <p>...</p> <p>(e) a <i>trustee</i> of an <i>AUT</i>; or</p> <p>(ea) a <i>depository</i> of an <i>ACS</i>; or</p> <p>...</p>
...		
<p>Note 2. The following modules or chapters are relevant in the <i>FCA Handbook</i> only: <i>COND</i>, <i>INSPRU</i>, <i>COBS</i>, <i>ICOBS</i>, <i>MCOB</i>, <i>CASS</i>, <i>MAR</i>, <i>TC</i>, <i>SUP 1A</i>, 7, 9, 10A, 12 & 17, <i>DEPP</i>, <i>DISP</i>, <i>COLL</i>, <u><i>FUND</i></u>, <i>PROF</i>, <i>LR</i>, <i>PR</i>, <i>DTR</i> and <i>EG</i>.</p>		

...

14 Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

Application

...

14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(aa) authorised in Gibraltar under the *Reinsurance Directive*; or

...

(d) authorised in Gibraltar under ~~the *Investment Services Directive*~~ *MiFID*; or

(e) authorised in Gibraltar under the *UCITS Directive*.

...

- (2) Gibraltar insurance companies, *credit institutions, insurance intermediaries, and investment firms and management companies* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in *SUP 14* to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

16 Reporting requirements

...

16.10 Verification of standing data

Application

- 16.10.1 G The effect of *SUP 16.1.1R* is that this section applies to every *firm* except:

...

- (2) a *UCITS* qualifier; or

- (2A) an *AIFM* qualifier; or

...

...

16.11 Product Sales Data Reporting

Application

- 16.11.1 R This section applies to a ~~firm~~ *firm* which is a *home finance provider*; or which is, in respect of sales to a *retail client* or a *consumer*:

...

- (1A) the manager of an authorised *AIF* or a *UCITS* scheme; or

- (2) the operator of ~~a regulated collective investment scheme~~, an *investment trust savings scheme*, or a *personal pension scheme*; or

....

...

- 16.11.8A G Where the ~~operator manager~~ of a ~~collective investment scheme~~ an authorised AIF or a UCITS scheme receives business from a firm which operates a nominee account, the data report in respect of those transactions submitted by the ~~operator manager~~ should treat those transactions as transactions undertaken by the ~~operator manager~~ with the firm.

...

16 **Reports from ~~trustees of AUTs and~~ depositaries of ICVCs, AUTs and ACSs**
Annex
12G

...

App 3 **Guidance on passporting issues**

...

App 3.3 **Background**

...

- App 3.3.6 G ...

(2) The European Commission has not produced an interpretative communication on ~~either~~ the *Insurance Mediation Directive*, AIFMD or ~~on~~ the *UCITS Directive*.

...

- App 3.3.13 G The *Single Market Directives* require *credit institutions, insurance undertakings* (other than *reinsurance undertakings*), *MiFID investment firms*, AIFMDs, *UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*...

...

App 3.9 **Mapping of MiFID, CRD, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order**

- App 3.9.1 G The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passporting activities* under the *CRD*, *MiFID*, AIFMD, the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer

those services in the *United Kingdom*.

- App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive* or the *Insurance Mediation Directive*...

...

- App 3.9.5A G **Activities set out in article 6(2) to (4) of AIFMD**

<u>Table 2ZA: AIFMD activities</u>		<u>Part II RAO Activities</u>	<u>Part III RAO Investments</u>
<u>1.</u>	<u><i>AIFM management functions.</i></u>	<u>Article 51ZC</u>	<u>N/A (activity relates to property of any kind)</u>
<u>2.</u>	<u>Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client basis (Note 2).</u>	<u>Articles 14, 21, 25, 37, 40 (arranging only), 64</u>	<u>Articles 76 to 81, 83 to 85, 89</u>
<u>3.</u>	<u>Investment advice (Note 2).</u>	<u>Articles 53, 64</u>	<u>Articles 76 to 81, 83 to 85, 89</u>
<u>4.</u>	<u>Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.</u>	<u>Articles 40, 45, 64</u>	<u>Articles 76 to 81, 83 to 85, 89</u>
<u>5.</u>	<u>Reception and transmission or orders in relation to <i>financial instruments</i>.</u>	<u>Articles 25(1), 64</u>	<u>Articles 76 to 81, 83 to 85, 89</u>
<u>Note 1. See <i>FUND</i> 1.4.2R to <i>FUND</i> 1.4.4R for further information in relation to the activities that <i>full-scope UK AIFMs</i> are able to perform.</u>			
<u>Note 2. See <i>FUND</i> 1.4.5G for the position with respect to assets which are not <i>financial instruments</i>.</u>			

- App 3.9.6 G Activities set out in Article 6(2) and (3) of the *UCITS Directive*

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	...	Articles 14, 21, 25, 37, 51, 53, 64 <u>OR</u> <u>Article 51ZA</u>	Articles 76-81, 83-85, 89 <u>OR</u> <u>N/A (activity relates to property of any kind) (Note 3)</u>
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, <u>40 (arranging only)</u> , 53 , 64	...
....			
<p>Note 1. A UCITS management company can only exercise passport rights under the UCITS Directive (article 2(1)(h) of MiFID). A UCITS management company can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also authorised to carry on the activity set out in row (2) of the table (see <i>COLL 6.9.9R</i>).</p>			
...			
<p><u>Note 3. The regulated activity of managing a UCITS may be carried on for property of any kind (article 4(2) of the regulated activities order). However, the scheme property of a UCITS scheme is limited to certain types of property, in line with <i>COLL 5</i> (Investment and borrowing powers).</u></p>			

...

Part 2: Comes into force on 22 July 2014

3 Auditors

3.1 Application

...

Material elsewhere in the Handbook

...

3.1.10 G Other relevant sections of the Handbook (see *SUP* 3.1.9G)

...	
<i>UCITS firm</i>	<i>(UPRU)</i>
...	

...

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

...

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

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 6	<ul style="list-style-type: none"> acting as the depository of an authorised contractual scheme ...	...	....	...
...				

...

App 3 Guidance on passporting issues

...

3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

...

3.9.6 G Activities set out in Article 6(2) and (3) of the UCITS Directive

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	...	Articles 14, 21, 25, 37, 51, 53, 64 OR Article 51ZA	Articles 76-81, 83-85, 89 OR N/A (activity relates to property of any kind) (Note 3)
...			

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 Statutory notices and the allocation of decision making

...

2.5 Provision for certain categories of decision

...

Modified procedures in collective investment scheme and certain other cases

...

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) in relation to an ~~authorised unit trust~~ authorised unit trust scheme, the ~~manager~~ manager and ~~trustee~~ trustee;

...

(2) in relation to an *ICVC*, the ~~directors~~ directors and the ~~depository~~ depository;

(3) in relation to a *recognised scheme*, the *operator* and, if any, the ~~trustee~~ trustee or *depository*.

...

2 Warning notices and decision notices under the Act and certain other enactments

Annex
1G

...

OEIC Regulations reference	Description	Handbook reference	Decision maker
...			
Regulation 22(1)/(2)/(4)	when the <i>FCA</i> is proposing to refuse approval of (or, having given a <i>warning</i>	...	...

/(5)	<i>notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or director <i>director</i> of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21		
------	---	--	--

...

Annex J

Amendments to the Compensation sourcebook (COMP)

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

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the FSCS?

...

4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to *COMP 4.2.1R*

...	
(3)	<i>Collective investment schemes, and anyone who is the operator <u>operator or trustee depositary</u> of such a scheme <u>scheme</u>.</i>
...	

...

Annex K

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

5 Investment and borrowing powers

...

5.2 General investment powers and limits for UCITS schemes

...

Investment in collective investment schemes

5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* ("second *scheme*") unless the second *scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in second *schemes* within (1)(b) to (e):

(1) the second *scheme* must:

...

(b) be ~~recognised~~ a *recognised scheme* under the provisions of section ~~270~~ 272 of the *Act* (~~Schemes authorised in designated countries or territories~~ Individually recognised overseas schemes) that is authorised by the *supervisory authorities of Guernsey, Jersey or the Isle of Man* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or

...

...

Qualifying non-UCITS collective investment schemes

- 5.2.14 G (1) *COLL* 9.3 gives further detail as to the recognition of a *scheme* under section ~~270~~ 272 of the *Act*.
- (2) Article 50 of the *UCITS Directive* sets out the general investment limits. So, a ~~*non-UCITS retail scheme, or its equivalent EEA scheme*~~ *scheme* which has the power to invest in gold or immovables would not meet the criteria set out in ~~*COLL 5.2.13R(1)(e) and COLL 5.2.13R(1)(d)*~~ *COLL 5.2.13R(1)*.
- (3) In determining whether a *scheme* (other than a *UCITS*) meets the requirements of article 50(1)(e) of the *UCITS Directive* for the purposes

of ~~COLL 5.2.13R (1)(d) or COLL 5.2.13R (1)(e)~~ COLL 5.2.13R(1), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a ~~UCITS scheme~~ UCITS:

...

...

6 Operating duties and responsibilities

...

6.9 Independence, names and UCITS business restrictions

...

Restrictions of business for UCITS management companies

6.9.9 R A *UCITS management company* must not engage in any activities other than:

(1) ~~acting as:~~

(a) ~~an authorised fund manager of an authorised fund; or~~

(b) ~~an operator of any other collective investment scheme for which the firm is subject to prudential supervision; [deleted]~~

(1A) managing a UCITS;

(1B) managing an AIF;

(1C) acting as a residual CIS operator;

(2) activities for the purposes of or in connection with those in ~~(1)~~ (1A), (1B) or (1C);

...

...

9 Recognised schemes

...

9.3 Section ~~270 and~~ 272 recognised schemes

Information and documents to be supplied for a ~~section 270 notification or section~~

272 application

- 9.3.1 D (1) If the *operator* of a *scheme* ~~gives notice to the FCA under section 270 of the Act (Schemes authorised in designated countries or territories) or~~ makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the ~~notice or~~ application must include the information in paragraph (4).
- ...
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the ~~notification or~~ application:
- ...
- (k) a copy of the latest annual report and any subsequent half-yearly report; and
- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; ~~and~~
- (m) ~~for notifications under section 270 only, a copy of the authorisation document issued by the authority in the designated territory confirming that the *scheme* is of a class covered by the designation order.~~
- ...

Preparation and maintenance of prospectus

- 9.3.3 R (1) An *operator* of a *scheme* which is a *recognised scheme* by virtue of section ~~270 or~~ 272 of the *Act* must comply, ~~subject to paragraph (2) below,~~ with the requirements set out in *COLL* 4.2 (Pre-sale notifications).
- (2) Where a *scheme* recognised under section ~~270~~ 272 of the *Act* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of *COLL* 4.2.5R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

9.4 Facilities in the United Kingdom

General

- 9.4.1 R (1) The *operator* of a *recognised scheme* under section 264, ~~section 270 or~~ section 272 of the *Act* must maintain facilities in the *United Kingdom* in order to satisfy the requirements of *COLL* 9.4.2R to *COLL* 9.4.6R.
- ...

...

Place of facilities

- 9.4.6 R (1) ...
- (2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address, ~~the alternative address in paragraph (3)~~ such other address in the *United Kingdom* where the *operator* can be contacted.
- (3) ~~The alternative address is such convenient address as the *operator* determines, except that, in the case of a *scheme* recognised under section 272 of the Act where the *operator* is not an *authorised person*, the alternative address is to be the principal place of business in the *United Kingdom* of the *authorised person* who is the representative of the *operator*. [deleted]~~

...

Annex L

Amendments to the Listing Rules sourcebook (LR)

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

App 1

Relevant definitions

...

recognised scheme a *scheme* recognised under:

...

(a) ...

(b) ~~section 270 of the Act (Schemes authorised in designated countries or territories); or [deleted]~~

(c) ...

Annex M

Amendments to the Energy Market Participants Guide (EMPS)

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

1 Special guide for energy market participants

...

1.2 Parts of the Handbook applicable to energy market participants

...

1.2.3 G Applicability of parts of Handbook to energy market participants

This table belongs to *EMPS 1.2.1G*

	Part of Handbook	Applicability to energy market participants
...		
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	<i>COLL will ordinarily</i> <u>This does not apply to an <i>energy market participant</i> that carries on <i>regulated activities</i> in relation to an <i>energy collective investment scheme</i>.</u>
	<u>Investment Funds sourcebook (<i>FUND</i>)</u>	<u>This does not apply to an <i>energy market participant</i>.</u>

...		

Annex N

Amendments to the Oil Market Participants Guide (OMPS)

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

1 Special guide for oil market participants

...

1.2 Parts of the Handbook applicable to oil market participants

...

1.2.2 G Parts of Handbook applicable to oil market participants

This table belongs to *OMPS 1.2.1G*

	Part of Handbook	Applicability to oil market participants
...		
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	<i>COLL</i> will ordinarily <u>This does not apply to an oil market participant that carries on regulated activities in relation to an oil collective investment scheme.</u>
	<u>Investment Funds sourcebook (<i>FUND</i>)</u>	<u>This does not apply to an oil market participant.</u>

...		

Annex O

Amendments to the Service Companies Guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Parts of the Handbook applicable to service companies

...

1.2.2 G Parts of Handbook applicable to service companies

This table belongs to *SERV* 1.2.1G

	Part of Handbook	Applicability to services companies
...		
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	None of the other specialist sourcebooks applies.
	<u>Investment Funds sourcebook</u> (<i>FUND</i>)	
	...	
...		

Annex P

Amendments to the Enforcement Guide (EG)

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

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.1 The *FCA* has powers under section 55J of the *Act* to vary or cancel an *authorised person's Part 4A permission* and a power under section 55L to impose requirements on an *authorised person*. The *FCA* may use these powers where:

...

- (2) the person has not carried on a *regulated activity* to which the *Part 4A permission* relates for a period of at least 12 months (or six months in the case of a *full-scope UK AIFM*); ~~or~~
- (3) it is desirable to exercise the power in order to advance one or more of its operational objectives; or
- (4) the person has failed to comply with a requirement in Part 5 of the *AIFMD UK regulation* (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.

...

Limitations and requirements that the *FCA* may impose when exercising its section 55J and 55L powers

...

8.12 Examples of *requirements* that the *FCA* may consider imposing when exercising its *own-initiative power* in support of its enforcement function are: ... a *requirement* that all or any of the *firm's* assets, or all or any assets belonging to investors but held by the *firm* to its order, must be transferred to a ~~trustee~~ trustee approved by the *FCA*.

Cancelling a firm's Part 4A permission on its own initiative

...

8.14 The grounds on which the *FCA* may exercise its power to cancel an authorised person's permission under section 55J of the *Act* are the same as the grounds for variation and for imposition of requirements. They are set out in section 55J(1) and section 55L(2) and described in *EG* 8.1. Examples of the types of circumstances in

which the *FCA* may cancel a *firm's Part 4A permission* include:

...

Sections 55J(6) and 55K of the *Act* sets out further grounds on which the *FCA* may cancel the permission of *authorised persons* which are *investment firms* and section 55J(6A) of the *Act* set out further grounds on which the *FCA* may cancel the permission of *authorised persons* who are *full-scope UK AIFMs*.

...

9 Prohibition Orders and withdrawal of approval

...

Prohibition orders and withdrawal of approval - approved persons

...

- 9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

- (3) Whether, and to what extent, *the approved person* has:

...

- (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or ~~failed to comply with any directly applicable Community regulation made under *MiFID* or any directly applicable provision of the *auction regulation* any qualifying EU provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order.~~

...

10 Injunctions

...

Section 380 (injunctions for breaches of relevant requirements⁹) and section 381 (injunctions in cases of market abuse): the *FCA's* policy

...

⁹ Under sections 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate

regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other *Act* and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the AIFMD UK regulation. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

...

11 Restitution and redress

...

The FCA’s choice of powers

...

11.5 However, there may be circumstances in which the *FCA* will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the *FCA* wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement^{10A} ~~of the *Act* or any directly applicable Community regulation or decision made under *MiFID* or the *UCITS Directive* or the *auction regulation*~~; the *FCA*’s powers to apply for *injunctions* restraining *firms* from breaching one of those relevant requirements are discussed in chapter 10 of this guide.

...

^{10A}Under section 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other *Act* and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 380(8) to (12) of the *Act*.

...

Other relevant powers

11.8 The *FCA* may apply to the court for an *injunction* if it appears that a *person*, whether authorised or not, is reasonably likely to breach a relevant requirement^{10B} ~~of the *Act* or any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*~~, or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached one of those requirements or has engaged in *market abuse* and is likely to continue doing so.

^{10B}Under section 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified,

or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the Act; or which is imposed by the AIFMD UK regulation. The definition of “appropriate regulator” is set out in section 380(8) to (12) of the Act.

11.9 The FCA may consider taking action for a financial penalty or *public censure*, as well as seeking restitution, if a *person* has breached a relevant requirement^{10C} ~~of the Act or any directly applicable Community regulation or decision under MiFID or the UCITS Directive or the auction regulation~~, or has engaged in, or required or encouraged others to engage in *market abuse*.

^{10C}Under section 204A(2), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the Act or by a qualifying EU provision specified, or of a description specified, for the purpose of section 204A(2) by the Treasury by order or which is imposed by the AIFMD UK regulation. The definition of “appropriate regulator” is set out in section 204A(3) of the Act.

...

Annex Q

Amendments to the Perimeter Guidance manual (PERG)

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

1 Introduction to the Perimeter Guidance manual

...

1.4 General guidance to be found in PERG

...

1.4.2 G Table: list of general guidance to be found in PERG.

Chapter:	Applicable to:	About:
...
<i>PERG 8:</i> Financial promotion and related activities	any <i>person</i> who needs to know ... • whether his activities in making or helping others to make <i>financial promotions</i> are <i>regulated activities</i> ; • <u>whether he is marketing an AIF.</u>	... • the circumstances in which <i>persons</i> who are primarily involved in making or helping others to make <i>financial promotions</i> may themselves be conducting <i>regulated activities</i> requiring <i>authorisation</i> or exemption • <u>the marketing of an AIF</u>
...
<i>PERG 15:</i> Guidance on the scope of the Payment Services Regulations 2009	....	...
<u><i>PERG 16:</i> Scope of the Alternative Investment Fund Managers Directive</u>	<u>any person who needs to know whether a collective investment undertaking is an AIF.</u>	<u>the scope of the regulated activities of managing an AIF and acting as trustee or depositary of an AIF.</u>

...

2 Authorisation and regulated activities

...

2.2 Introduction

...

2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1G*):

...

(3) If the answer is ‘Yes’ to (1) or (2), will my activities ~~involve~~ relate to specified investments in any way (see *PERG 2.6*)?

(3A) Are my activities specified for the purposes of section 22(1)(b) of the Act (and, accordingly, when carried on by way of business, are a regulated activity when carried on in relation to property of any kind) or related to a specified benchmark (see *PERG 2.5.1AG*)?

...

2.3 The business element

...

2.3.2 G ...

(3) A *person* managing assets on a discretionary basis while acting as ~~trustee~~ trustee of an *occupational pension scheme* may in certain circumstances be regarded as acting by way of business even if he would not, in the ordinary meaning of the phrase, be regarded as doing so. The Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) Order 2001 (as amended) contains some exceptions from this (see article 4).

...

...

2.5 Investments and activities: general

...

2.5.1-A G The following *regulated activities* may be carried on in relation to property of any kind:

- (1) *managing a UCITS;*
- (2) *acting as trustee or depositary of a UCITS;*
- (3) *managing an AIF;*
- (4) *acting as trustee or depositary of an AIF;*
- (5) *establishing, operating and winding up a collective investment scheme;*
- (6) *establishing, operating and winding up a stakeholder pension scheme;*
- (7) *establishing, operating and winding up a personal pension scheme;*
- (8) *meeting of repayment claims; and*
- (9) *managing dormant account funds (including the investment of such funds).*

...

Investment services and activities

...

2.5.5 G For persons who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by *MiFID*. To achieve this result, some of the exclusions in the Order (that will apply to *persons* who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A "MiFID investment firm", for these purposes, includes *credit institutions* to which *MiFID* applies (see *PERG 13, Q5 and 9*); ~~and *UCITS investment firms*~~ *collective portfolio management investment firms* providing the services of *portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to ~~units~~ *units* of collective investment undertakings; and *AIFM investment firms* providing the ancillary service of reception and transmission of orders in relation to *financial instruments*. The same exclusions are also unavailable to...

...

2.7 Activities : a broad outline

...

~~Establishing~~ Managing a UCITS, managing an AIF, and establishing etc
collective investment schemes

- 2.7.12 G ~~The regulated activities carried on in relation to a collective investment scheme generally are the establishing, operating or winding up a collective investment scheme. Acting as the depositary and acting as sole director of an open ended investment company are also separate regulated activities. In all these cases, the activities are regulated where the schemes themselves are authorised schemes for the purposes of the UK product regulation regime under Part XVII of the Act (Collective investment schemes) as well as where the schemes are unregulated schemes. The process for applying for authorisation of a collective investment scheme is described in COLLG 2 (Authorised fund applications). Guidance on whether certain types of scheme (property and land investment schemes) may amount to collective investment schemes is set out in PERG 11 (Property investment clubs and land investment schemes). [deleted]~~
- 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) Acting as trustee of an authorised unit trust scheme is expressly included as a regulated activity.~~
 - ~~(1A) Acting as the depositary of an authorised contractual scheme is expressly included as a regulated activity.~~
 - ~~(2) Acting as depositary of an open ended investment company that is authorised under regulations made under section 262 of the Act (Open ended investment companies), is a regulated activity.~~
 - ~~(3) Acting as a sole director of such a company is a regulated activity.~~
 - ~~(4) Managing an authorised unit trust scheme will amount to operating the scheme and so will be a regulated activity. A person acting as 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)).~~
 - ~~(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)).~~
 - ~~(5) An open ended investment company will, once it is authorised under regulations made under section 262 of the Act, become an authorised~~

~~person in its own right under Schedule 5 to the Act (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an *authorised open ended investment company* will be operating the *collective investment scheme* constituted by the *company*. It is not required to go through a separate process of *authorisation* as a *person* because it has already undergone the process of product authorisation.~~

~~(6) *Operators, trustees or depositaries of UCITS schemes* constituted in other *EEA States* are also *authorised persons* under Schedule 5 of the Act if those *schemes* qualify as recognised *collective investment schemes* for the purposes of section 264 of the Act. [deleted]~~

2.7.13A G There are five *regulated activities* associated with *UCITS, AIFs* and *collective investment schemes*:

- (1) *managing a UCITS*;
- (2) *acting as trustee or depositary of a UCITS*;
- (3) *managing an AIF*;
- (4) *acting as trustee or depositary of an AIF*; and
- (5) *establishing, operating and winding up a collective investment scheme*.

2.7.13B G The activity of *managing a UCITS* is derived from the *UCITS Directive*. A *person* will *manage a UCITS* where they carry on *collective portfolio management* of a *UCITS*. A *UCITS* is a type of *collective investment scheme* which is authorised by a *competent authority* in an *EEA State* as meeting the requirements under the *UCITS Directive*.

2.7.13C G A *person* will carry on the activity of *acting as trustee or depositary of a UCITS* if they act as:

- (1) *trustee of an authorised unit trust scheme*; or
- (2) *depositary of an investment company with variable capital* or an *authorised contractual scheme*;

where, in either case, the *scheme* or company is a *UCITS*.

2.7.13D G *PERG 16* provides *guidance* on the activities of *managing an AIF* (see *PERG 16.3*) and *acting as trustee or depositary of an AIF* (see *PERG 16.4*).

2.7.13E G Most *collective investment schemes* will also be either a *UCITS* or an *AIF* (although not all *AIFs* are *collective investment schemes*). As a result, there is a potential overlap between the activity of *establishing, operating and winding up a collective investment scheme* and the activities of *managing a UCITS* and *managing an AIF*. However, there are exclusions in the *RAO* which considerably reduce the overlap (see *PERG 2.8.10G(2)* and *PERG*

16.5).

2.7.13F G An open-ended investment company will, once it is authorised under regulations made under section 262 of the Act, become an authorised person in its own right under Schedule 5 to the Act (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an authorised open-ended investment company will be operating the collective investment scheme constituted by the company. It is not required to go through a separate process of authorisation as a person because it has already undergone the process of product authorisation.

2.7.13G G Operators, trustees or depositaries of UCITS established in other EEA States are also authorised persons under Schedule 5 of the Act if those schemes are recognised schemes for the purposes of section 264 of the Act.

...

Agreeing

2.7.21G G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, managing dormant account funds, the meeting of repayment claims, or carrying on any of the activities that are regulated in relation to collective investment schemes managing a UCITS, acting as depositary or trustee of a UCITS, managing an AIF, acting as trustee or depositary of an AIF, establishing, operating or winding up a collective investment scheme, stakeholder pension schemes establishing, operating or winding up a stakeholder pension scheme or personal pension schemes establishing, operating or winding up a personal pension scheme*. A person will need to make sure that he has appropriate *authorisation* at the stage of agreement and before he actually carries on the underlying activity (such as the *dealing* or *arranging*).

2.8 Exclusions applicable to particular regulated activities

...

Accepting deposits

2.8.2 G ~~Only one exclusion applies~~ Two exclusions apply to the *regulated activity* of *accepting deposits*. ~~A~~ The first is that a deposit taker providing its services as an *electronic commerce activity* from another EEA State into the United Kingdom (see PERG 2.9.18G) does not carry on a *regulated activity*. The second relates to a firm with a Part 4A permission to manage an AIF or manage a UCITS (see PERG 2.9.22G (Managers of UCITS and AIFs)). In addition to the situations that are excluded from being '*deposits*' (see PERG 2.6.2G to PERG 2.6.4G), several persons are *exempt persons* in relation to

the *regulated activity of accepting deposits* (see *PERG 2.10.8G(2)*).

Effecting and carrying out contracts of insurance

- 2.8.3 G The following activities are excluded from both the *regulated activities of effecting and carrying out contracts of insurance*.

...

(3) ...

(4) Activities carried on by a firm with a Part 4A permission to manage an AIF or manage a UCITS, where they are in connection with, or for the purposes of, managing an AIF or managing a UCITS (see *PERG 2.9.22G (Managers of UCITS and AIFs)*).

Dealing in investments as principal

- 2.8.4 G The *regulated activity of dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

...

(6) A person will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in *PERG 2.9*), he enters as principal into a transaction:

...

(g) as an *incoming ECA provider* (see *PERG 2.9.18G*);

(h) where it is in connection with or for the purposes of managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see *PERG 2.9.22G (Managers of UCITS and AIFs)*).

...

Dealing in investments as agent

- 2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows.

...

(3) In addition, exclusions apply in specified circumstances (outlined in *PERG 2.9 (Regulated activities: exclusions available in certain circumstances)*), where a person enters as agent into a transaction:

...

(j) on behalf of the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;

(k) where it is in connection with or for the purposes of *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*).

...

Arranging deals in investing and arranging a home finance transaction

...

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows:

...

(13) The following exclusions from both article 25(1) and (2) (outlined in *PERG 2.9*) apply in specified circumstances where a *person* makes arrangements:

...

(l) for or with a view to transactions to be entered into by or on behalf of the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;

(m) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the person has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.22G (Managers of UCITS and AIFs)*).

The exclusions referred to in (a), (b), (g), ~~and (h)~~ and (m) also apply to *arranging* activities related to *home finance transactions*. More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5 (Insurance mediation activities)*.

...

Managing investments

2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity* of *managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance mediation* or *reinsurance mediation* and is subject to further limitations

discussed below. In addition, the following exclusions (outlined in *PERG* 2.9) apply in specified circumstances where a *person* manages assets:

...

(5) belonging to the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; or

(6) in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs)).

...

...

Assisting in the administration and performance of a contract of insurance

...

2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

...

(5) that involve the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see *PERG* 2.9.19G(2)); ~~or~~

(6) that involve a *contract of insurance* covering large risks situated outside the *EEA* (see *PERG* 2.9.19G); or

(7) where it is in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs)).

Safeguarding and administering investments

2.8.8 G The exclusions from the *regulated activity* of *safeguarding and administering investments* are as follows.

...

(3A) A person with a Part 4A permission to act as trustee or depositary of an AIF or act as trustee or depositary of an UCITS will not carry on the activity of safeguarding and administering investments in respect of their activities for an AIF or UCITS for which they are acting as trustee or depositary.

- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):
- ...
- (g) that are *contracts of insurance* and, in so doing, provides information to *policyholders* or potential *policyholders* on an incidental basis in the course of his carrying on a business or profession not otherwise consisting of *regulated activities* (see *PERG 2.9.19G(2)*); ~~and~~
- (h) belonging to the participants in a business angel-led enterprise capital fund, but only where such safeguarding and administration is carried on by a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; and
- (i) in connection with or for the purposes of managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs)).

Sending dematerialised instructions

- 2.8.9 G Exclusions from the *regulated activity of sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertified Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* sends dematerialised instructions:

...

- (3) as an *incoming ECA provider* (see *PERG 2.9.18G*);
- (4) where it is in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs)).

~~Establishing~~ Managing a UCITS, managing an AIF and establishing etc collective investment schemes

- 2.8.10 G (1) There are two exclusions from the range of activities specified as being regulated in relation to collective investment schemes. These exclusions relate to incoming ECA providers (see PERG 2.9.18G) and to business angel led capital funds (see PERG 2.9.20G). In other cases, the key issue is whether or not what is being done relates to

~~something that is a *collective investment scheme*. Exclusions exist in relation to that issue (see *PERG 2.6.18G*). The exclusion for *incoming ECA providers* (see *PERG 2.9.18G*) applies to the range of activities specified as being regulated in relation to *AIFs* and *collective investment schemes* (see *PERG 2.7.13AG*). The exclusion for business angel-led capital funds (see *PERG 2.9.20G*) applies to the activities of *managing an AIF, managing a UCITS* and *establishing, operating and winding up a collective investment scheme*.~~

- (2) In addition, there are two further exclusions which apply to the activity of *establishing, operating or winding up a collective investment scheme*:
- (a) the exclusion in *PERG 2.9.22G* (Managers of UCITS and AIFs); and
- (b) a person (A) does not carry on the *regulated activity of establishing, operating or winding up a collective investment scheme* if:
- (i) in relation to a *UCITS*, at the time A carries on the activity, the *UCITS* is managed by a person with a *Part 4A permission to manage a UCITS* or, no more than 30 days have passed since the *UCITS* was managed by a person with that *permission* (this 30-day period can be extended in certain circumstances, as set out in article 51ZG(2) of the *RAO*); or
- (ii) in relation to an *AIF*, the exclusion described in *PERG 16.5*, question 5.2(2) applies.
- (3) In other cases, the key issue is whether or not what is being done relates to something that is a *collective investment scheme* (see *PERG 2.6.18G*) or an *AIF* (see *PERG 16.6*).

Establishing etc pension schemes

- 2.8.11 G ~~The only exclusion from~~ Two exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. The first relates to *incoming ECA providers* (see *PERG 2.9.18G*). The second relates to *firms* with a *Part 4A permission to manage an AIF* or *manage a UCITS* (see *PERG 2.9.22G* (Managers of UCITS and AIFs)).

Advising on investments

...

- 2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* in the circumstances referred to in *PERG 2.8.6AG*(5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction)

is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments* or *advising on a home finance transaction*:
 - ...
 - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *PERG 2.9.5G*); ~~and~~
 - (c) as an *incoming ECA provider* (see *PERG 2.9.18G*); and
 - (d) where it is in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G (Managers of UCITS and AIFs));

...

...

Lloyd's activities

- 2.8.13 G *Electronic commerce activities* provided by an *incoming ECA provider* are excluded from the *regulated activities* that relate expressly to business carried on at Lloyds (see *PERG 2.9.18G*). A firm with a Part 4A permission to manage an AIF or manage a UCITS is also excluded from carrying on a regulated activity if the person carries on that activity in connection with, or for the purposes of, managing an AIF or managing a UCITS (see PERG 2.9.22G). Otherwise the only exclusions that apply concern the *regulated activity of arranging deals* in its application to business carried on at Lloyd's.

Entering funeral plan contracts

- 2.8.14 G *Entering as provider into a funeral plan contract* is not treated as a *regulated activity* where:
- ...
 - (3) it is provided as an *electronic commerce activity* by an *incoming ECA provider* (see *PERG 2.9.18G*); or
 - (4) it is provided by a firm with a Part 4A permission to manage an AIF or manage a UCITS in connection with, or for the purposes of, managing an AIF or managing a UCITS (see PERG 2.9.22G (Managers of UCITS and AIFs)).

Administering regulated mortgage contracts

...

2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance transaction*:

...

- (2) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see PERG 2.9.5G); ~~and~~
- (3) as an incoming *ECA provider* (see PERG 2.9.18G); and
- (4) in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see PERG 2.9.22G (Managers of UCITS and AIFs)).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Business angel-led enterprise capital funds

2.9.20 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

- (4) *safeguarding and administering investments*;
- (4A) *managing a UCITS*;
- (4B) *managing an AIF*;

...

...

Managers of UCITS and AIFs

2.9.22 G This exclusion applies to a *person* with a *Part 4A permission to carry on the activity of *managing an AIF* or *managing a UCITS*. The exclusion means that activities carried on by the *person* in connection with, or for the purposes of, *managing a UCITS* or (as the case may be) *managing an AIF*, are excluded from being *regulated activities* (except the activities of *managing an AIF* and *managing a UCITS* themselves). In the *FCA*'s view this is particularly likely to affect the following *regulated activities*:*

- (1) dealing in investments as principal;
- (2) dealing in investments as agent;
- (3) arranging (bringing about) deals in investments;
- (4) managing investments;
- (5) arranging safeguarding and administration of assets;
- (6) advising on investments (except pension transfers and pension opt-outs); and
- (7) agreeing to carry on specified kinds of activity.

...

2.10 Persons carrying on regulated activities who do not need authorisation

...

Members of the professions

...

- 2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

- (3A) *bidding in emissions auctions;*
- (3B) managing a UCITS;
- (3C) acting as trustee or depositary of a UCITS;
- (3D) managing an AIF;
- (3E) acting as trustee or depositary of an AIF;

...

...

2 Annex 1 Authorisation and regulated activities

Flow chart – Do you need authorisation?

[see end of instrument]

2 Annex Regulated activities and the permission regime
2G

...

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	...
Designated investment business [see notes 1A, 1B and 1C to Table 1]	
...	...
<p>(m) establishing, operating or winding up a collective investment scheme (article 51)</p> <p>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p>(i) establishing, operating or winding up a regulated collective investment scheme; and</p> <p>(ii) establishing, operating or winding up an unregulated collective investment scheme. [deleted]</p> <p><u>(ma) managing a UCITS (article 51ZA);</u></p> <p><u>(mb) acting as trustee or depositary of a UCITS (article 51ZB);</u></p> <p><u>(mc) managing an AIF (article 51ZC);</u></p> <p>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p><u>(i) managing an AIF where the AIF is an authorised AIF; and</u></p> <p><u>(ii) managing an AIF where the AIF is an unauthorised AIF.</u></p> <p><u>(md) acting as trustee or depositary of an AIF (article 51ZD);</u></p> <p>For the purposes of the <i>permission</i> regime,</p>	<p>[see note 5 to Table 1]</p>

<p><u>this regulated activity</u> is subdivided into:</p> <p><u>(i) acting as trustee or depositary of an AIF where the AIF is an authorised AIF; and</u></p> <p><u>(ii) acting as trustee or depositary of an AIF where the AIF is an unauthorised AIF.</u></p> <p><u>(me) establishing, operating or winding up a collective investment scheme (article 51ZE);</u></p> <p>(n) acting as trustee of an authorised unit trust scheme (article 51) [deleted]</p> <p>(na) acting as the depositary of an authorised contractual scheme (article 51) [deleted]</p> <p>(o) acting as the depositary or sole director of an open-ended investment company (article 51) [deleted]</p> <p>(p) establishing, operating or winding up a stakeholder pension scheme (article 52(a))</p>	
...	...

Notes to Table 1

Note 1:

In addition to the *regulated activities* listed in Table 1, article 64 of the *Regulated Activities Order* specifies that *agreeing to carry on a regulated activity* is itself a *regulated activity* in certain cases. This applies in relation to all the *regulated activities* listed in Table 1 apart from:

...

- ~~• establishing, operating or winding up a collective investment scheme (article 51(1)(a));~~
- ~~• acting as trustee of an authorised unit trust scheme (article 51(1)(b));~~
- ~~• acting as the depositary of an authorised contractual scheme (article 51(1)(bb));~~
- ~~• acting as the sole depositary or sole director of an open-ended investment company (article 51(1)(e));~~
- managing a UCITS (article 51ZA);
- acting as trustee or depositary of a UCITS (article 51ZB);
- managing an AIF (article 51ZC);
- acting as trustee or depositary of an AIF (article 51ZD);
- establishing, operating or winding up a collective investment scheme (article 51ZE);

...
...
Note 5: Article 4(2) of the <i>Regulated Activities Order</i> specifies the activities (m) <u>(ma)</u> to (p) for the purposes of section 22(1)(b) of the <i>Act</i> . That is, these activities will be <i>regulated activities</i> if carried on in relation to any property and are not expressed as relating to a <i>specified investment</i> .
...

...

4 Guidance on regulated activities connected with mortgages

...

4.10 Exclusions applying to more than one regulated activity

...

Exclusion: Managers of UCITS and AIFs

- 4.10.9 G Article 72AA of the *Regulated Activities Order* (Managers of UCITS and AIFs) contains an exclusion relating to *firms with a Part 4A permission to manage a UCITS or manage an AIF* (see PERG 2.9.22G)

...

5 Guidance on insurance mediation activities

...

5.11 Other aspects of exclusions

- 5.11.1 G This part of the *guidance* deals with:

...

- (3) the following exclusions applying to more than one *regulated activity*:

...

- (b) activities carried on by a provider of relevant goods or services (article 72B (Activities carried on by a provider of relevant goods or services)); ~~and~~

- (c) large risks (article 72D (Large risks contracts where risk situated outside the EEA)); and
- (d) activities carried on by firms with a Part 4A permission to manage a UCITS or manage an AIF (article 72AA (Managers of UCITS and AIFs)).

...

Exclusions applying to more than one regulated activity

- 5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. ~~Three~~ Four exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a ~~fourth~~ fifth, *overseas persons*, in PERG 5.12 (Link between activities and the United Kingdom).

...

Managers of UCITS and AIFs

- 5.11.17 G Article 72AA of the *Regulated Activities Order* (Managers of UCITS and AIFs) contains an exclusion relating to firms with a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.22G).

...

8 Financial promotion and related activities

8.1 Application and purpose

Application

...

- 8.1.1A G This chapter also applies to persons who need to know whether they are marketing an AIF.

Purpose of guidance

- 8.1.2 G The purpose of this *guidance* is ~~two~~ three-fold:

...

- (2) to outline the main circumstances in which *persons* who are primarily involved in making or helping others to make *financial promotions* may be conducting *regulated activities* requiring *authorisation* or exemption themselves; this part of the *guidance* may also be of more general relevance to *persons* who may be

concerned whether or not they are carrying on the *regulated activities of advising on investments or making arrangements with a view to transactions in investments*; and

(3) to provide guidance in relation to marketing an AIF.

8.1.3 G In particular, this *guidance* covers:

...

(16) *regulated activities*:

...

(b) *making arrangements with a view to transactions in investments* (see *PERG 8.32*); ~~and~~

(17) the business test for *regulated activities* (see *PERG 8.34*); and

(18) the marketing of an AIF (see *PERG 8.37*).

...

8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 G Where *collective investment schemes* are concerned, additional restrictions are placed on their promotion to ensure that only those which are regulated are promoted to the general public. This is achieved by a combination of sections 21 and 238 (Restrictions on promotion) of the *Act* as explained in *PERG 8.20.2G*. A *regulated collective investment scheme* is:

...

(4) ~~a *scheme* recognised under section 270 of the *Act* (Schemes authorised in designated countries or territories); or [deleted]~~

...

...

8.20.5 G In addition, where the *collective investment scheme* is an *AIF*, the *marketing* of that *scheme* is subject to additional restrictions (see *PERG 8.37*).

...

9 Meaning of open-ended investment company

9.1 Application and Purpose

...

Other guidance that may be relevant

...

- 9.1.5 G *Open-ended investment companies* constituted in other *EEA States* which are seeking to exercise rights conferred by the *UCITS Directive* should refer to *COLL 9* (Recognised schemes) for *guidance* on the requirements of section 264 of the *Act* (Schemes constituted in other *EEA States*). Those seeking to exercise rights under *AIFMD* should refer to *FUND 10* (Operating on a cross-border basis).

...

9.10 Significance of being an open-ended investment company

...

Implications for regulated activities

...

- 9.10.10 G (1) *A person carrying on the regulated activity of establishing, operating or winding up a collective investment scheme* that is constituted ~~by~~ as an *open-ended investment company* will need *permission* for those activities. In line with section 237(2) of the *Act* (Other definitions), the *operator* of a *collective investment scheme* that is an *open-ended investment company* is the *company* itself and therefore the starting point for an *open-ended investment company* that is incorporated in the *United Kingdom* is that it needs *permission* to operate itself. ~~But where the *open-ended investment company* is incorporated outside the *United Kingdom*, it will only require *permission* if its operation takes place in the *United Kingdom*.~~ However, where an *open-ended investment company* is managed by a *firm* with a *Part 4A permission to manage an AIF* or *manage a UCITS* the exclusion described in *PERG 2.8.10G(2)(b)* means that the *open-ended investment company* would not carry on the *regulated activity of establishing, operating or winding up a collective investment scheme*.
- (2) If an *open-ended investment company* is authorised by the *FCA* under the *OEIC Regulations* it is an *authorised person* under *Schedule 5* of the *Act*. As a result of *paragraph 2(2)* of *Schedule 5* of the *Act* the *company* has *permission*, in so far as it is a *regulated activity* (other than *managing an AIF*), to carry on the operation of the *scheme* and *any regulated activity* in connection with or for the purposes of the operation of the *scheme*. As explained in (1) the *company* may not need the *permission of establishing, operating or*

winding up a collective investment scheme in any event. However, as a result of article 18 of the Regulated Activities Order it would otherwise need permission to deal as principal because an open-ended investment company is excluded from the definition of a “company” for the purposes of that article.

- (3) If an open-ended investment company is authorised by the FCA under the OEIC Regulations and has only one director, the OEIC regulations require that director to be a body corporate which is an authorised person and which has a Part 4A permission to carry on the regulated activity of managing a UCITS or managing an AIF. This reflects the fact that, in those circumstances, the director is a separate legal person who is responsible for overseeing compliance by the company with requirements implementing the UCITS Directive or AIFMD.

...

11 Guidance on property investment clubs and land investment schemes

...

11.2 Guidance on property investment clubs

...

Q3. Does the FCA regulate property investment clubs?

The ~~FCA~~ FCA regulates the operation (or management) and promotion of property investment clubs if, in substance, they amount to *collective investment schemes* or AIFs.

...

Q4A. What is an AIF and will my property investment club be one?

PERG 16.1 and 16.2 provide guidance on what constitutes an AIF; you should consult this guidance to determine whether the management and marketing of a property investment club will be regulated by the FCA as an AIF. You should be aware that a property investment club may be both a collective investment scheme and an AIF, and may be an AIF even if it does not amount to a collective investment scheme. The remainder of this section does not address whether or not a property investment club may be an AIF or the consequences if it is an AIF.

...

12 Guidance for persons running or advising on personal pension schemes

...

12.2 Establishing, operating or winding up a personal pension scheme

...

Q14. I intend to operate a personal pension scheme under which members will acquire benefits derived from the management of a pool of assets. Will the scheme become a collective investment scheme or an AIF?

No. *Personal pension schemes* (along with *stakeholder pension schemes*) are specifically exempted from being *collective investment schemes*. In the FCA's view a *personal pension scheme* also does not amount to an AIF (see PERG 16.2, question 2.32). However, where a ~~personal pension scheme~~ *personal pension scheme* invests in a pooled investment vehicle of some kind, that vehicle may itself be a ~~collective investment scheme~~ *collective investment scheme* or an AIF unless another exemption applies to it.

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the CRD IV (Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Regulation on prudential requirements for credit institutions and investment firms)

13.1 Introduction

...

MiFID scope

...

In addition to ~~investment firms~~ *investment firms*, ~~MiFID~~ *MiFID* is also relevant to ~~credit institutions~~ *credit institutions* providing investment services or performing investment activities (see Q5), to *AIFMs* to which article 6.4 of *AIFMD* applies (in other words, *AIFM investment firms*) and to *UCITS management companies* to which article 6.4 of the *UCITS Directive* applies (in other words, *UCITS investment firms*).

...

13.2 General

...

Q6A. We are an AIFM that, in addition to managing AIFs, provides portfolio management services to third parties. How does MiFID apply to us?

If you are the AIFM of an AIF with a Part 4A permission to manage investments including MiFID financial instruments pursuant to article 6.4 of AIFMD, certain MiFID provisions apply to you when you provide investment services to third parties (see article 6.6 of AIFMD). These include initial capital endowment, organisational and conduct of business requirements. You are an AIFM investment firm for the purposes of the Handbook. Article 6.6 of AIFMD is reflected in paragraph (3) of the Handbook definition of "MiFID investment firm".

...

13.3 Investment Services and Activities

...

Q17. What is portfolio management under MiFID? (A4 and article 4.1(9))

Portfolio management is managing portfolios in accordance with mandates given by ~~clients~~ clients on a discretionary client-by-client basis where such portfolios include one or more ~~MiFID MiFID financial instruments~~ financial instruments. If there is only a single ~~financial instrument~~ financial instrument in a portfolio, you may be carrying on portfolio management, even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a ~~collective investment scheme fund~~, where discretion has been delegated to the manager by the ~~operator~~ operator or manager of the ~~scheme~~ fund...

...

13.4 Financial Instruments

...

Q29. What are units in collective investment undertakings (C3)?

This category of ~~financial instrument~~ financial instrument includes ~~units~~ units in regulated and unregulated ~~collective investment schemes~~ collective investment schemes and units or shares in an AIF (whether or not the AIF is also a collective investment scheme). In our view, in accordance with article 1.2(a) and 2.1(o) of the *Prospectus Directive*, units or shares in an AIF include shares in closed-ended corporate schemes, such as shares in investment trust companies, and so are also ~~units~~ units in collective investment undertakings for this purpose (as well as being transferable securities).

...

13.5 Exemptions from MiFID

...

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

Yes. Generally speaking, collective investment undertakings are specifically exempt, as are their ~~depositories~~ *depositories* and managers. For collective investment undertakings within the scope of the *UCITS Directive* or *AIFMD* the "manager" corresponds to the *management company* or *AIFM* of the undertaking. So far as ~~collective investment schemes~~ *collective investment schemes* which are outside the scope of the *UCITS Directive* or *AIFMD* are concerned, the "manager" corresponds, in essence, to the ~~operator~~ *operator* of a ~~scheme~~ *scheme* and not to a person who is managing the assets of the ~~scheme~~ *scheme* (unless that person is also the ~~operator~~ *operator*)...

In the case of *UCITS management companies*, some ~~MiFID~~ *MiFID* provisions will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to *units* to third parties, by virtue of article 6.4 of the *UCITS Directive* (see Q6). *UK AIFMs* will also be subject to *MiFID* if they provide *investment services or activities* for an undertaking other than a *fund* for which they are appointed as *manager* or *operator*. *Full-scope UK AIFMs* are only able to provide a limited range of such activities, for which they are subject to specific *MiFID* provisions by virtue of article 6.6 of *AIFMD* (see Q6A).

...

13.6 CRD IV

...

Q55. Are we subject to the CRD and the EU CRR?

Only ~~investment firms~~ *investment firms* subject to the requirements of ~~MiFID~~ *MiFID* are subject to the requirements of the *CRD* and the *EU CRR* (which allow the recast *CAD* to apply for certain ~~firms~~ *firms*). This includes *collective portfolio management investment firms* (see Q6, Q6A and Q63).

...

...

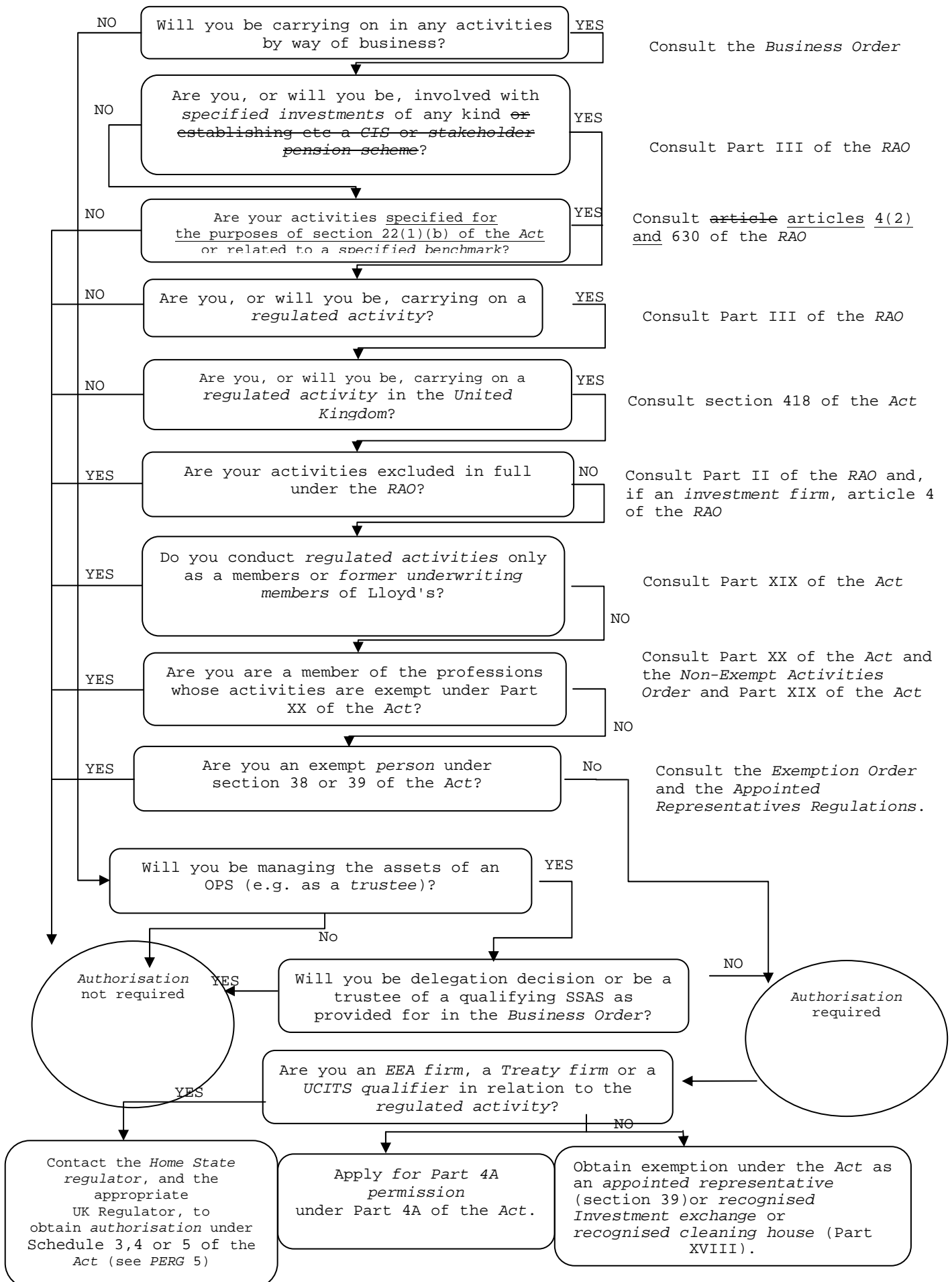
13 Annex 3 Flow chart 1 - Are you subject to the CRD and EU CRR (or allowed to be subject to the recast CAD)?

The flowcharts which form 2 Annex 1 and 13 Annex 3 are on the following pages.

2 Annex 1 Authorisation and regulated activities

Flow chart – Do you need authorisation?

See next page



13 Annex 3 Flow chart 1 - Are you subject to the CRD and EU CRR (or allowed to be subject to the recast CAD)?

