

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 139A (Power of the FCA to give guidance);
    - (d) section 247 (Trust scheme rules);
    - (e) section 248 (Scheme particulars rules);
    - (f) section 261I (Contractual scheme rules);
    - (g) section 261J (Contractual scheme particulars rules); and
  - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. Part 1 of the Annex to this instrument comes into force on 1 April 2019 and Part 2 of the Annex to this instrument comes into force on 30 September 2019.

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2018.

By order of the Board  
22 March 2018

## Annex

## Amendments to the Collective Investment Schemes sourcebook (COLL)

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

## Part 1: Comes into force 1 April 2019

## 4 Investor Relations

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## 4.2 Pre-sale notifications

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Table: contents of the prospectus

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

...

Dealing			
17	The following particulars		
	...		
	(h)	in a <i>prospectus</i> available during the period of any initial offer:	
		...	
		(vi)	any other relevant details of the <i>initial offer</i> ; <del>and</del>
	(i)	whether a <i>unitholder</i> may effect transfer of title to <i>units</i> on the authority of an <i>electronic communication</i> and if so the conditions that must be satisfied in order to effect a transfer; <u>and</u>	
	(j)	<u>if the <i>authorised fund manager</i> deals as principal in <i>units</i> of the <i>scheme</i> and holds them for that purpose, a statement of its policy for doing so and, where applicable:</u>	
		(i)	<u>a description of when the <i>authorised fund manager</i> may retain any profits it earns and absorb any losses it incurs for these activities; and</u>
		(ii)	<u>a statement of non-accountability as referred to in <i>COLL</i> 6.7.16G.</u>

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Guidance on contents of the prospectus

4.2.6 G ...

- (3) ~~In relation to COLL 4.2.5R(27), the *prospectus* might include a statement of the *authorised fund manager's* policy in relation to holding *units* in the *scheme* as *principal*, and in particular whether it seeks to make a profit from doing so. It might also include a prominent statement of non-accountability referred to in COLL 6.7.16G (Exemptions from liability to account for profits). [deleted]~~

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## 6 Operating duties and responsibilities

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### 6.3 Valuation and pricing

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#### Profits from dealing as principal

6.3.5D R (1) Where an *authorised fund manager (AFM)*:

- (a) accepts instructions to *sell* and *redeem units* as *principal*; and
- (b) is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,

subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was sold (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.

- (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3) below, when dealing as *principal* in relation to:

- (a) a *unit* issued at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager* as *principal*; and

- (b) a unit redeemed and cancelled at that valuation point.
- (3) The amount of the loss referred to in (2) is:
- (a) for units issued in accordance with (2)(a), the difference between the issue price of a unit and the sale price of that unit, less any preliminary charge;
- (b) for units cancelled in accordance with (2)(b), the difference between the cancellation price of a unit and the redemption price of that unit, before any redemption charge is applied.
- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent valuation point.
- (5) This rule applies to the redemption and sale of units of different classes at the same valuation point, if those classes are treated as one for the purpose of COLL 6.2.6AR.
- 6.3.5E    G    (1) The authorised fund manager may commit its own capital to hold units for the purpose of dealing as principal and may seek to profit from gains in the value of the units it holds, when it issues or redeems units at one valuation point then sells or cancels them at a later valuation point. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the units fall in value, or from the ability to match simultaneous sales and redemptions at different prices at no risk to its own capital.
- (2) The AFM may allocate any amount arising under COLL 6.3.5DR(1) in the interests of investors by paying it into scheme property for the benefit of all unitholders. Alternatively, the AFM may redistribute it individually among the transacting investors.
- (3) Where the AFM intends to allocate a payment to scheme property, it should determine if the amount (when added to any other amounts of the same kind relating to that class of units) would, if taken into account in the scheme's valuation, affect the accuracy of the unit prices to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the scheme until the payment is transferred. Such payments into scheme property should be made regularly and no less frequently than payments for the AFM's management charge are transferred out of scheme property.
- (4) The calculation to be performed under COLL 6.3.5DR should be carried out in relation to each valuation point of the scheme on a timely basis. Where it is not practical to do this before unit prices are calculated and published, the AFM should ensure that the accrual represents a reasonable estimate of the total payment it intends to

make to scheme property.

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**6.7 Payments**

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Exemptions from liability to account for profits

6.7.16 G ~~An~~ Except as provided in COLL 6.3.5DR, an affected person is not liable to account to another *affected person* or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

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**8 Qualified investor schemes**

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**8.3 Investor relations**

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Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to COLL 8.3.2R.

...	
<b>13</b>	<b>Dealing</b>
	Details of:
	...
(9)	the circumstances in which direct <i>issue</i> or <i>cancellation</i> of <i>units</i> by the <i>ICVC</i> or the <i>depository</i> of an <i>AUT</i> or <i>ACS</i> (as appropriate) may occur and the relevant procedures for such <i>issues</i> and <i>cancellations</i> ; <del>and</del>
(10)	whether a <i>unitholder</i> may effect transfer of title to <i>units</i> on the authority of an <i>electronic communication</i> and if so the conditions that must be satisfied in order to effect a transfer; <u>and</u>
(11)	<u>if the <i>authorised fund manager</i> deals as principal in <i>units</i> of the <i>scheme</i> and holds them for that purpose, a statement of its policy for doing so and, where applicable:</u>

		(a)	<u>a description of when the <i>authorised fund manager</i> may retain any profits it earns and absorb any losses it incurs for these activities; and</u>
		(b)	<u>a statement of non-accountability as referred to in <i>COLL 8.5.14G</i>.</u>
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## 8.5 Powers and responsibilities

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### 8.5.9 ...

#### Profits from dealing as principal

#### 8.5.9-B R (1) Where an *authorised fund manager*:

- (a) accepts instructions to *sell and redeem units as principal*; and
- (b) is able to execute a *sale* instruction by *selling units* it has *redeemed* at the same *valuation point*, without placing its own capital at risk,

subject to (2), the *AFM* must not retain for its own account, or the account of any of its *associates*, the difference between the *price* at which a *unit* was *redeemed* (before deduction of any *redemption charge*) and the *price* at which the same *unit* was sold (after deduction of any *preliminary charge*). Any such difference must be allocated in a way that is fair to *unitholders*.

#### (2) In calculating the profit arising under (1), the *AFM* may offset any loss it incurs at the same *valuation point*, calculated in accordance with (3), when dealing as *principal* in relation to:

- (a) a *unit issued* at that *valuation point* to fulfil a *sale* instruction that cannot be matched against any *redeemed unit* or any other *unit* of that *class* held by the *manager* as *principal*; and
- (b) a *unit redeemed* and *cancelled* at that *valuation point*.

#### (3) The amount of the loss referred to in (2) is:

- (a) for *units issued* in accordance with (2)(a), the difference between the *issue price* of a *unit* and the *sale price* of that *unit*, less any *preliminary charge*;
- (b) for *units cancelled* in accordance with (2)(b), the difference between the *cancellation price* of a *unit* and the *redemption*

price of that unit, before any redemption charge is applied.

- (4) Where any loss arising under (2) is greater than any profit arising under (1), that loss cannot be offset against any profit arising at a subsequent valuation point.
- (5) This rule applies to the redemption and sale of units of different classes at the same valuation point, if those classes are treated as one for the purpose of COLL 8.5.10AR.

- 8.5.9-A G
- (1) The authorised fund manager may commit its own capital to hold units for dealing as principal and may seek to profit from gains in the value of the units it holds, when it issues or redeems units at one valuation point then sells or cancels them at a later valuation point. However, it should not profit from situations in which it is not exposed to an equal risk of loss if the units fall in value, or from the ability to match simultaneous sales and redemptions at different prices at no risk to its own capital.
  - (2) The AFM may allocate any amount arising under COLL 8.5.9-BR(1) in the interests of investors by paying it into scheme property for the benefit of all unitholders. Alternatively, the AFM may redistribute it individually among the transacting investors.
  - (3) Where the AFM intends to allocate a payment to scheme property, it should determine if the amount (when added to any other amounts of the same kind relating to that class of units) would, if taken into account in the scheme's valuation, affect the accuracy of the unit prices to four significant figures. If so, and subject to (4) below, the amount should be accrued in each subsequent valuation of the scheme until the payment is transferred. Such payments into scheme property should be made regularly and no less frequently than payments for the AFM's management charge are transferred out of scheme property.
  - (4) The calculation to be performed under COLL 8.5.9-BR should be carried out in relation to each valuation point of the scheme on a timely basis. Where it is not practical to do this before unit prices are calculated and published, the AFM should ensure that the accrual represents a reasonable estimate of the total payment it intends to make to scheme property.

Maintaining the value of a short-term money market fund

8.5.9A R ...

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Exemptions from liability to account for profits

8.5.14 G ~~An~~ Except as provided in COLL 8.5.9-BR, an affected person is not liable to account to another affected person or to the unitholders of any scheme for

any profits or benefits it makes or receives that are made or derived from or in connection with:

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## Part 2: Comes into force 30 September 2019

### 4 Investor Relations

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### 4.5 Reports and accounts

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Contents of the annual long report

#### 4.5.7 R ...

(5) An annual long report of a *UCITS scheme* which is a *feeder UCITS* must also include:

(a) a statement on the aggregate ~~charges~~ of the payments out of *scheme property* as set out in the *prospectus* (in this rule “charges”) of the *feeder UCITS* and the *master UCITS*; and

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(8) An annual long report of an *authorised fund* must also contain a statement setting out a description of the assessment of value required by *COLL 6.6.20R* including:

(a) a separate discussion and conclusion for the matters covered in each paragraph of *COLL 6.6.21R*, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;

(b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;

(c) an explanation for any case in which *unitholders* hold *units* in a *class* that is subject to higher charges than those applying to



other classes of the same scheme with substantially similar rights;

- (d) the conclusion of the authorised fund manager’s assessment of whether the charges are justified in the context of the overall value delivered to the unitholders in the scheme; and
- (e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the unitholders, a clear explanation of what action has been or will be taken to address the situation.

- (9) An AFM need not include the statement required by (8) in its annual long report if it makes the statement available to unitholders annually in a composite report covering two or more of the authorised funds it manages, published in the same manner as the annual long report.

4.5.7A G ...

- (5) An AFM which is not subject to COLL 6.6.20R as a result of COLL 6.6.19R is not required to comply with COLL 4.5.7R(8) or (9).

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## 6 Operating duties and responsibilities

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

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Table of application

6.6.2 R This table belongs to COLL 6.6.1R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
6.6.18G	...					
<u>6.6.19R</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.20R</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.21R</u>		<u>x</u>	<u>x</u>		<u>x</u>	

<u>6.6.22G</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.23E</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.24G</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.25R</u>		<u>x</u>	<u>x</u>		<u>x</u>	
<u>6.6.26G</u>		<u>x</u>	<u>x</u>		<u>x</u>	
Notes:	...					
	(5)	<u>COLL 6.6.20R to COLL 6.6.26G have a special application as set out in COLL 6.6.19R.</u>				

...

Application of assessment of value and independent director rules

6.6.19 R COLL 6.6.20R to COLL 6.6.26G apply to:

- (1) an authorised fund manager (other than an EEA UCITS management company or an EEA AIFM) of an AUT, ACS or ICVC; and
- (2) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

Assessment of value

- 6.6.20 R (1) An authorised fund manager must conduct an assessment at least annually for each scheme it manages of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders.
- (2) In carrying out the assessment required by (1), the AFM must, separately for each class of units in a scheme, consider at least the matters set out in COLL 6.6.21R (Table: minimum considerations – assessment of value).

Table: minimum considerations – assessment of value

6.6.21 R This table belongs to COLL 6.6.20R (Assessment of value).

<b><u>Quality of service</u></b>	
(1)	<u>The range and quality of services provided to unitholders.</u>
<b><u>Performance</u></b>	

(2)	The performance of the <i>scheme</i> , after deduction of all payments out of <i>scheme property</i> as set out in the <i>prospectus</i> (in this rule, <i>COLL 6.6.23E</i> and <i>COLL 8.5.19E</i> , “charges”). Performance should be considered over an appropriate timescale having regard to the <i>scheme’s</i> investment objectives, policy and strategy.
<b><u>AFM costs - general</u></b>	
(3)	In relation to each charge, the cost of providing the service to which the charge relates, and when money is paid directly to <i>associates</i> or external parties, the cost is the amount paid to that <i>person</i> .
<b><u>Economies of scale</u></b>	
(4)	Whether the <i>AFM</i> is able to achieve savings and benefits from economies of scale, relating to the direct and indirect costs of managing the <i>scheme property</i> and taking into account the value of the <i>scheme property</i> and whether it has grown or contracted in size as a result of the <i>sale and redemption of units</i> .
<b><u>Comparable market rates</u></b>	
(5)	In relation to each service, the market rate for any comparable service provided:
(a)	by the <i>AFM</i> ; or
(b)	to the <i>AFM</i> or on its behalf, including by a <i>person</i> to which any aspect of the <i>scheme’s</i> management has been delegated.
<b><u>Comparable services</u></b>	
(6)	In relation to each separate charge, the <i>AFM’s</i> charges and those of its <i>associates</i> for comparable services provided to <i>clients</i> , including for institutional mandates of a comparable size and having similar investment objectives and policies;
<b><u>Classes of units</u></b>	
(7)	Whether it is appropriate for <i>unitholders</i> to hold <i>units</i> in <i>classes</i> subject to higher charges than those applying to other <i>classes</i> of the same <i>scheme</i> with substantially similar rights.

6.6.22 G When assessing the quality of service provided under *COLL 6.6.21R(1)*:

- (1) the *AFM* should have regard to the quality of service it provides and the quality of service provided by any *person* to which any aspect of the *scheme’s* management has been delegated or which provides services to the *AFM* or on its behalf; and
- (2) the *AFM’s* assessment of quality of service is not confined to

services provided directly to *unitholders* but may include services undertaken on their behalf by the *AFM*, such as consideration of the quality of the investment process used to make decisions about managing the *scheme property*.

- 6.6.23 E Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of *COLL* 6.6A.2R, *COBS* 2.1.1R or *COBS* 2.1.4R as applicable.
- 6.6.24 G (1) *COLL* 6.6A.2R applies to *AFMs* of *UCITS schemes* and in broad terms requires *AFMs* to act in the best interests of *unitholders*. In particular, *COLL* 6.6A.2R(1) requires *AFMs* to ensure *unitholders* are treated fairly, *COLL* 6.6A.2R(5) requires *AFMs* to act in such a way as to prevent undue costs being charged to any *scheme* it manages and its *unitholders* and *COLL* 6.6A.2R(6)(b) requires an *AFM* to act solely in the interests of the *scheme* and its *unitholders*.
- (2) *COBS* 2.1.1R is the *clients best interests rule*, *COBS* 2.1.4R(2) requires a *full-scope UK AIFM* to act in the best interests of the *AIF* it manages or the investors of the *AIF* it manages and the integrity of the market and *COBS* 2.1.4R(3) requires the *AFM* to treat all investors fairly.

#### Independent directors

- 6.6.25 R (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural *persons*. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural *persons*.
- (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
- (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
- (4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
- (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative

maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a person who served as an independent director of an AFM's governing body before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an AFM's governing body until five years have elapsed from the end of the ten year period referred to in (4).

(6) The terms of employment on which independent members are appointed must be such as to secure their independence.

6.6.26 G (1) The role of the independent members should include providing input and challenge as part of the AFM's assessment of value in accordance with COLL 6.6.20R. Independent members may be tasked with additional responsibilities, taking into consideration remuneration and conflict of interest rules.

(2) A member of an AFM's governing body is unlikely to be considered independent if any of the following circumstances exist:

(a) the person is an employee of the AFM or of an affiliated company or paid by them for any role (other than as an independent member of the governing body of an affiliated company or of a body exercising an independent governance function within the AFM's group) including participating in the AFM's share option or performance-related pay scheme; or

(b) the person has been an employee of the AFM or of an affiliated company within the AFM's group (other than having been an independent member of the governing body of an affiliated company or of a body exercising an independent governance function within the AFM's group) or of any person to which collective portfolio management of the scheme has been delegated, within the five years preceding their appointment to the governing body; or

(c) the person has, or had within the three years preceding their appointment, a material business relationship of any description with the AFM or with an affiliated company or with any person to which collective portfolio management of the scheme has been delegated, either directly or indirectly; or

(d) the person has received any sort of remuneration from the

AFM's group (other than as an independent member of the governing body of an affiliated company of the AFM or of a body exercising an independent governance function within the AFM's group) within the five years preceding their appointment; or

- (e) the person has a close relative who is an officer or other senior employee of the AFM or a company within the AFM's group.
- (3) The expertise and experience required under COLL 6.6.25R(3) may have been gained through professional experience, public service, academia or otherwise, and does not need to relate to the financial services industry.
- (4) The effect of COLL 6.6.25R(6) is that a person who serves on the governing body should be subject to appropriate contractual terms so that, when acting in the capacity of an independent member of the governing body, they are free to act in the interests of unitholders and should be able to do so without breaching their terms of employment.
- (5) An AFM should fill any vacancies that arise within the required number of independent members on its governing body as soon as possible and, in any event, within six months.
- (6) An AFM should consider indemnifying the independent members of its governing body against liabilities incurred while fulfilling their duties as such members.

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## 7 Suspension of dealings and termination of authorised funds

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

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Consequences of commencement of winding up or termination

7.3.6 R ...

- (2) Once winding up or termination has commenced:
- (a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the ICVC or to the units and scheme property in the case of

a *sub-fund*;

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#### **7.4 Winding up an AUT and terminating a sub-fund of an AUT**

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When an AUT is to be wound up or a sub-fund terminated

- 7.4.3 R (1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:
- (a) *COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the AUT or to the units and scheme property in the case of a sub-fund;*

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

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

- 7.4A.4 R (1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:
- (a) *COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing), COLL 6.6.20R to COLL 6.6.24G (Assessment of value) and COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the units and scheme property in the case of a sub-fund of a co-ownership scheme;*

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## 8 Qualified investor schemes

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### 8.3 Investor relations

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Contents of the annual report

8.3.5A R ...

(5) An annual report of an *authorised fund* must also contain a statement setting out a description of the value for money assessment required by *COLL* 8.5.17R including:

- (a) a separate discussion and conclusion for the matters covered in each paragraph of *COLL* 6.6.21R, and for each other matter that formed part of the assessment, covering the considerations taken into account in the assessment, a summary of its findings and the steps undertaken as part of or as a consequence of the assessment;
- (b) an explanation for any case in which benefits from economies of scale that were identified in the assessment have not been passed on to *unitholders*;
- (c) an explanation for any case in which *unitholders* hold *units* in a *class* for which the payments out of *scheme property* in relation to that *class* as set out in the *prospectus* (in this rule, “charges”) are higher than those applying to other *classes* of the same *scheme* with substantially similar rights;
- (d) the conclusion of the *authorised fund manager’s* assessment of whether the charges are justified in the context of the overall value delivered to the *unitholders* in the *scheme*; and
- (e) if the assessment has identified that the charges are not justified in the context of the overall value delivered to the *unitholders*, a clear explanation of what action has been or will be taken to address the situation.

(6) An *AFM* need not include the information required by (5) in its annual report if it makes the information available to *unitholders* annually in a composite report covering two or more of the *schemes* it manages, published in the same manner as the annual report.

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### 8.5 Powers and responsibilities



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Application of assessment of value and independent director rules

- 8.5.16 R COLL 8.5.17R to COLL 8.5.21G apply to an authorised fund manager (other than an EEA AIFM) of an AUT, ACS or ICVC.

Assessment of value

- 8.5.17 R (1) An authorised fund manager must conduct an assessment at least annually for each scheme it manages of whether the payments out of scheme property set out in the prospectus are justified in the context of the overall value delivered to unitholders.
- (2) In carrying out the assessment required by (1), the AFM must, separately for each class of units in a scheme, consider at least the matters set out in COLL 6.6.21R (Table: minimum considerations – assessment of value).
- 8.5.18 G The guidance in COLL 6.6.22G applies to interpreting the requirements of COLL 6.6.21R as applied by COLL 8.5.17R.
- 8.5.19 E Failure by an AFM to take sufficient steps to address any instance where a scheme's charges are not justified in the context of the overall value delivered to unitholders may be relied on as tending to establish contravention of COLL 6.6A.2R, COBS 2.1.1R or COBS 2.1.4R as applicable.

Independent directors

- 8.5.20 R (1) An authorised fund manager must ensure that at least one quarter of the members of its governing body are independent natural persons. If the AFM's governing body comprises fewer than eight members, the AFM must instead ensure that at least two of its members are independent natural persons.
- (2) The authorised fund manager, in appointing an independent member of its governing body, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
- (3) The authorised fund manager must take reasonable steps to ensure that independent members appointed to its governing body have sufficient expertise and experience to be able to make judgements on whether the AFM is managing each scheme in the best interests of unitholders.
- (4) (a) Independent members of an AFM's governing body must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.

(b) If an independent member is appointed to more than one governing body within an AFM's group, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.

(c) In relation to a person who served as an independent director of an AFM's governing body before 1 October 2019, the five year term(s) and cumulative maximum duration of ten years run from that date.

(5) Independent members are not eligible for reappointment to an AFM's governing body until five years have elapsed from the end of the ten year period referred to in (4).

(6) The terms of employment on which independent members are appointed must be such as to secure their independence.

8.5.21 G The guidance in COLL 6.6.26G applies to interpreting the requirement for independence in COLL 8.5.20R.

## TP 1 Transitional Provisions

### TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
48	<u>COLL 4.5.7R(8) and (9) and COLL 8.3.5AR(5) and (6)</u>	<u>R</u>	<u>An authorised fund manager is not required to include the information prescribed by COLL 4.5.7R(8) and (9) or COLL 8.3.5AR(5) and (6) in its annual long report or in a composite report in respect of any annual accounting period ending before 30 September 2019.</u>	<u>From 30 September 2019</u>	<u>30 September 2019</u>