

**NEW COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK  
INSTRUMENT 2004**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) 138 (General rule-making power);
    - (b) 140 (Restriction on managers of authorised unit trust schemes);
    - (c) 145 (Financial promotion rules);
    - (d) 156 (General supplementary powers);
    - (e) 157 (Guidance);
    - (f) 242 (Applications for authorisation of unit trust schemes);
    - (g) 247 (Trust scheme rules);
    - (h) 248 (Scheme particulars rules);
    - (i) 270 (Schemes authorised in designated countries or territories);
    - (j) 274 (Applications for recognition of individual schemes);
    - (k) 278 (Rules as to scheme particulars);
    - (l) 340 (Appointment); and
    - (m) paragraph 17(1) of Schedule 1 (Fees);
  - (2) regulations 6 (FSA rules) and 12 (Applications for authorisation) of the Open-Ended Investment Companies Regulations (SI 2001/1228); and
  - (3) regulation 1(6) (Citation, commencement and interpretation) of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2000/1420).
- B. The provisions of or under the Act relevant to the rules and listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 April 2004.

**Making the New Collective Investment Schemes sourcebook (COLL)**

- D. The Financial Services Authority makes the rules, gives the guidance and makes the directions and requirements in the Annex to this instrument.

### **Revocation of previous instrument**

- E. The Collective Investment Schemes Sourcebook Instrument 2001 and CIS are revoked with effect from 12 February 2007.

### **Revocation of CIS references**

- F. References in the Handbook to CIS or any provision in CIS are deleted from 12 February 2007.

### **Citation**

- G. This instrument may be cited as the New Collective Investment Schemes Sourcebook Instrument 2004.
- H. The sourcebook in the Annex to this instrument (including its Schedules) may be cited as the New Collective Investment Schemes sourcebook (or COLL) until 12 February 2007 and thereafter be cited as the Collective Investment Schemes sourcebook (or COLL).

By order of the Board  
18 March 2004

## Collective Investment Schemes

### COLL Sourcebook - Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
<b>Extra time provisions</b>					
<b>Existing schemes electing to comply with COLL</b>					
1	Each and every <i>rule</i> in <i>COLL</i>	R	The <i>rules</i> in <i>COLL</i> do not apply to any relevant party in relation to an <i>authorised fund</i> in respect of which an application for an <i>authorisation order</i> was received by the <i>FSA</i> before 1 April 2004, unless the <i>authorised fund manager</i> of the <i>scheme</i> has exercised its right of election on behalf of the <i>scheme</i> to comply with <i>COLL</i> , instead of <i>CIS</i> , in accordance with <i>CIS 1.1.1A R (Right to elect to comply with COLL)</i> .	From 1 April 2004 to 12 February 2007	1 April 2004
2	Each and every <i>rule</i> in <i>COLL</i>	G	The effect of transitional provision 1 is that the default position for the relevant parties of existing <i>authorised funds</i> (by which is meant <i>authorised funds</i> in respect of which the application for the <i>authorisation order</i> was received by the <i>FSA</i> before 1 April 2004) is that <i>CIS</i>		

			continues to apply until 12 February 2007 <u>unless</u> the relevant <i>authorised fund manager</i> has exercised its right of election in accordance with <i>CIS</i> 1.1.1A R to comply with <i>COLL</i> , instead of <i>CIS</i> .		
<b>New schemes electing to comply with CIS</b>					
<b>3</b>	<b>Each and every rule in <i>COLL</i></b>	<b>R</b>	<b>(1) The <i>authorised fund manager</i> of an <i>authorised fund</i> whose <i>authorisation order</i> application was received by the <i>FSA</i> on or after 1 April 2004 may, with the consent of each of the other relevant parties:</b>	<b>From 1 April 2004 to 12 February 2007</b>	<b>1 April 2004</b>
			<b>(a) elect to comply with <i>CIS</i>; and</b>		
			<b>(b) subsequently revoke such an election and elect to comply with <i>COLL</i>, in which case no further election is permitted for that <i>fund</i>.</b>		
			<b>(2) An election or revocation in (1) does not take effect unless the <i>authorised fund manager</i> has notified the <i>FSA</i> in writing of:</b>		

			(a) the election or revocation; and		
			(b) the date from which it is to take effect.		
			(3) While an election in (1)(a) remains in effect, <i>COLL</i> does not apply to any relevant party in respect of the <i>authorised fund</i> . Instead, each relevant party must comply with <i>CIS</i> .		
			(4) The right of election referred to in (1) only applies in relation to an <i>authorised fund</i> which is a <i>UCITS scheme</i> , a <i>money market scheme</i> , a <i>futures and options scheme</i> , a <i>geared futures and options scheme</i> , a <i>property scheme</i> , a <i>feeder fund</i> or a <i>funds of funds scheme</i> .		
			(5) The <i>authorised fund manager</i> must make a record of any election or revocation under (1), and retain it for a period of six years from the date it takes effect.		
4	Each and every <i>rule</i> in <i>COLL</i>	G	(1) It is not necessary for the <i>schemes</i> referred to in transitional provision 3(4) initially to have complied with <i>COLL</i> , before an election is made on its behalf under transitional provision 3(1)(a) to comply with <i>CIS</i> .		

			(2) Note that while the <i>FSA's</i> permission is not required for an election under paragraph 3(1)(a) or a revised election under paragraph 3(1)(b), changes to the relevant <i>instrument constituting the scheme</i> and <i>prospectus</i> to give effect to such a revised election will require the <i>FSA's</i> written permission, as explained in <i>CIS</i> 16.1.11G (Notification of proposed changes to ICVCs) and <i>CIS</i> 16.1.12G (Notification of proposed changes to AUTs).		
<b>UCITS business restrictions</b>					
5	<b>COLL 6.9.9R (2) to (6) (Restrictions of business for UCITS management companies)</b>	<b>R</b>	<b>A UCITS management company must not carry on any of the activities specified in COLL 6.9.9R (2) to (6) (inclusive) unless it is a UCITS investment firm:</b>	<b>From 1 April 2004 to 12 February 2007</b>	<b>1 April 2004</b>
			(a) <b>whose permission to carry on any such activity was given before 13 February 2004; or</b>  (b) <b>which complies with Chapter 7 of IPRU (INV).</b>		
6	<b>COLL 6.9.9R (2) to (6) (Restrictions of business for UCITS management companies)</b>	<b>G</b>	<b>A UK firm will not be able to act as such and exercise an EEA right under the UCITS Directive unless it complies with Chapter 7 of IPRU(INV).</b>		

<b>Committees and delegation</b>					
7	<b>COLL 6.6.15R(2), (4) and (5) (Committees and delegation)</b>	R	<p>(1) Subject to (2), a <i>UCITS management company</i> which became authorised before 13 February 2004 will not contravene <i>COLL 6.6.15R (2), (4) and (5) (Committees and delegation)</i> to the extent that it complies with <i>CIS 7.6.1 R (2), (4) and (5)</i> and <i>CIS 7.10.4 R (1), (5) and (6)</i> as they applied before 12 February 2004.</p> <p>(2) Paragraph (1) does not apply in relation to any <i>UK firm</i> which exercises an <i>EEA right</i> under the <i>UCITS Directive</i>.</p>	From 1 April 2004 to 12 February 2007	1 April 2004
<b>Existing dual-priced AUTs: dealing and valuation</b>					
8	<b>COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5 (Valuation) and COLL 4.2.5R 16 (Table: contents of the prospectus)</b>	R	(1) Subject to (2), the <i>manager</i> of a <i>dual-priced AUT</i> which has exercised its entitlement under <i>CIS 1.1.1A R</i> to comply with <i>COLL</i> instead of <i>CIS</i> , will not contravene any of the provisions in column (2) to the extent that it complies with <i>CIS 15 (Dual-pricing and dealing)</i> , <i>CIS 5.2.5R (Valuation)</i> and <i>CIS 5A.2.5R (Valuation)</i> (and references in <i>COLL</i> to the <i>rules</i> in column (2) are to be construed accordingly).	From 1 April 2004 until 12 February 2007	1 April 2004

			<p>(2) Where the <i>rules</i> in <b>COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) and COLL 5.2.5 (Valuation)</b> conflict with the relevant requirements of <b>CIS 15 (Dual-pricing and dealing), CIS 5.2.5R (Valuation) and CIS 5A.2.5R (Valuation)</b>, the <i>manager</i> must proceed on the basis that the former <i>rules</i> (<b>COLL</b>) override the latter (<b>CIS</b>) unless compliance with a relevant <i>rule</i> in <b>COLL 6.2 or COLL 6.3 or COLL 5.2.5R</b> would not be possible.</p>		
9	<p><b>COLL 6.2 (dealing); COLL 6.3 (Valuation and pricing); COLL 5.2.5 (Valuation) and COLL 4.2.5R 16 (Table: contents of the prospectus)</b></p>	G	<p>(1) A <i>dual-priced AUT</i> values on a basis that results in different <i>issue</i> and <i>cancellation prices</i> compared to a single-priced <i>scheme</i>. Furthermore, the <i>manager</i> sets <i>sale</i> and <i>redemption prices</i> within the pricing envelope of the <i>cancellation price</i> and <i>issue price</i> together with the <i>preliminary charge</i>. Transitional provision 8 allows such a system to continue to operate.</p> <p>(2) However, transitional provision 8 also requires the <b>COLL</b> provisions to override the applicable <b>CIS</b> provisions where appropriate, that is in circumstances where there is a conflict between them. So, for example, publishing <i>prices</i> should comply</p>		



			with COLL 6.3.11R (Publication of prices) rather than CIS 15.4.14R. Where complying with the relevant <i>COLL rules</i> would not be practicable or not feasible for some reason, the <i>manager</i> is advised to contact the <i>FSA</i> .		
10	COLL 10.3.1R	R	<p>(1) If the <i>authorised fund manager</i> of a <i>scheme</i> notifies the <i>FSA</i> under section 251 of the <i>Act</i> or regulation 21 of the <i>OEIC Regulations</i> in relation to a proposal to alter a <i>scheme</i> under transitional provision 1 or transitional provision 3(1)(b), the <i>authorised fund manager</i> must pay to the <i>FSA</i> a fee of £400 for each individual <i>scheme</i> and a fee of £800 for each <i>umbrella scheme</i>.</p> <p>(2) A fee payable under this provision must be paid by bankers draft, cheque or other payable order when the notification is made.</p>	1 April 2004 to 12 February 2007	1 April 2004
<b>Definition of relevant party</b>					
11	COLL	R	For the purposes of these transitional <i>rules</i> , a "relevant party" in relation to:	From 1 April 2004 until 12 February 2007	1 April 2004
			(1) any <i>AUT</i> , is its <i>manager</i> and <i>trustee</i> ; and		
			(2) any <i>ICVC</i> , is:		
			(a) the <i>ICVC</i> ;		

			(b) its <i>ACD</i> ; (c) any other <i>directors</i> of the <i>ICVC</i> ; and (d) its <i>depository</i> .		

## **1 Introduction**

### **1.1 Applications and purpose**

#### **Application**

- 1.1.1 G (1) This sourcebook, except for *COLL 9* (Recognised schemes), applies to:
- (a) *investment companies with variable capital (ICVCs)*;
  - (b) *ACDs, other directors and depositaries of ICVCs*; and
  - (c) *managers and trustees of authorised unit trust schemes (AUTs)*.
- (2) *COLL 9* applies to *operators of schemes* that are *recognised schemes* and to those seeking to secure recognised status for such *schemes*.

#### **Purpose**

- 1.1.2 G (1) The general purpose of this sourcebook is to contribute to the *FSA* meeting its *regulatory objective* of the protection of *consumers*. It provides a regime of product regulation for *authorised funds*, which sets appropriate standards of protection for investors by specifying a number of features of those products and how they are to be operated.
- (2) In addition, this sourcebook implements part of the requirements of the *UCITS Directive* to meet community obligations relevant to *authorised funds*, with other requirements implemented in other parts of the *Handbook*.

#### **The Collective Investment Schemes Information Guide**

- 1.1.3 G The Collective Investment Schemes Information Guide *COLLG* provides some general background material on the regulatory structure surrounding *scheme* regulation in the *UK*.

## 1.2 **Types of authorised fund**

### **Types of authorised fund**

1.2.1 R An application for an *authorisation order* must propose that the *scheme* be one of the following types:

- (1) a *UCITS scheme*;
- (2) a *non-UCITS retail scheme*; or
- (3) a *qualified investor scheme*.

### **Types of authorised fund - explanation**

- 1.2.2 G (1) *UCITS schemes* have to comply with the conditions necessary in order to enjoy the rights available under the *UCITS Directive*. Such *schemes* must in particular comply with:
- (a) *COLL 3.2.8R* (UCITS obligations); and
  - (b) the investment and borrowing powers rules for *UCITS schemes* set out in *COLL 5.2 to 5.5*.
- (2) *Non-UCITS retail schemes* are schemes that do not comply with all the conditions set out in the *UCITS Directive*. Such *schemes* could become *UCITS schemes* provided they are changed, so as to comply with the conditions set out in the *UCITS Directive*.
- (3) *Qualified investor schemes* may only be promoted to professional investors on the same terms as *unregulated collective investment schemes*. Such *schemes* could change to become *non-UCITS retail schemes* or *UCITS schemes*.
- (4) The changes referred to in (2) and (3) require approval by the *FSA* and further information on that process is provided in *COLLG 3.1.5G* (Notification of changes to unit trusts (section 251)) and *COLLG 4.1.3G* (Notification of changes to ICVCs (Regulation 21)).

## **2 Authorised fund applications**

### **2.1 Authorised fund applications**

#### **Application**

- 2.1.1 R This chapter applies to any *person* seeking to arrange for the authorisation of a *scheme*.

#### **Purpose**

- 2.1.2 G This chapter helps in achieving the *regulatory objective* of protecting *consumers* by ensuring that any application for authorisation of a fund meets certain standards.

#### **Explanation**

- 2.1.3 G (1) This chapter sets out the requirements that a *person* must follow in applying for an *authorisation order* for a *scheme* under regulation 12 of the *OEIC Regulations* (Applications for authorisation) or section 242 of the *Act* (Applications for authorisation of unit trust schemes).
- (2) *COLLG 3* (The FSA's responsibilities under the Act) and *COLLG 4* (The FSA's responsibilities under the OEIC Regulations) provide more information on what the *Act* and the *OEIC Regulations* require in relation to ongoing notifications to the *FSA*.

#### **Specific requirements on application**

- 2.1.4 D An application for an *authorisation order* in respect of an *authorised fund* must be:
- (1) in writing in the manner directed and contain the information required in the application form available from the *FSA*;
  - (2) addressed for the attention of a member of *FSA* staff responsible for *collective investment scheme* authorisation matters; and
  - (3) delivered to the *FSA's* address by one of the following methods:
    - (a) posting; or
    - (b) leaving it at the *FSA's* address and obtaining a time-stamped receipt; or
    - (c) delivery by hand to a member of *FSA* staff responsible for *collective investment scheme* authorisation matters.

### **3 Constitution**

#### **3.1 Introduction**

##### **Application**

3.1.1 R This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where the *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

##### **Purpose**

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

- (1) *COLL 3.2* (The instrument constituting the scheme) contains requirements about provisions which must be included in the *instrument constituting the scheme* to give a similar degree of protection for investors in an *ICVC* or in an *AUT*; and
- (2) *COLL 3.3* (Units) provides *rules* and *guidance* which deal with the *classes* of *units* to ensure that investors in each *class* are treated equally.

## 3.2 The instrument constituting the scheme

### Application

3.2.1 R This section applies to:

- (1) an *authorised fund manager* of an *AUT* or *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

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

### Relationship between the instrument constituting the scheme and the rules

- 3.2.2 R (1) The *instrument constituting the scheme* must not contain any provision that:
- (a) conflicts with any *rule* in this sourcebook;
  - (b) prevents *units* in the *scheme* being marketed in the *United Kingdom*; or
  - (c) is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (2) Any power conferred by the *rules* on the *ICVC*, the *authorised fund manager*, any other *director* of the *ICVC*, or the *depository*, whether in a sole or joint capacity, is subject to any restriction in the *instrument constituting the scheme*.

### The trust deed for AUTs

- 3.2.3 R An *AUT* must be constituted by a *trust deed* made between the *manager* and the *trustee*.

### Matters which must be included in the instrument constituting the scheme

- 3.2.4 R The statements and provisions required by *COLL* 3.2.6R (Table: contents of the instrument constituting the scheme) must be included in the *instrument constituting the scheme*, where appropriate.

### The instrument constituting the scheme: OEIC Regulations and trust law requirements

- 3.2.5 G (1) Several of the matters set out in *COLL 3.2.6R* are required to be included in the *instrument constituting the scheme* under the *OEIC Regulations* or as a consequence of relevant trust law. In addition, further statements are required if the *scheme* or the *authorised fund manager* are to take advantage of the powers under the *rules* in this sourcebook.
- (2) Additional matters which are not contained in *COLL 3.2.6R* may be required to be included in the *instrument constituting the scheme* in order to comply with the *OEIC Regulations*, (particularly Schedule 2 – Instrument of Incorporation) and for the purposes of making the *scheme* eligible under relevant tax, pensions, or charities legislation.

**Table: contents of the instrument constituting the scheme**

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

**Name of scheme**

- 1 A statement of:
- (1) the name of the *authorised fund*; and
- (2) whether the *authorised fund* is a *UCITS scheme* or a *non-UCITS retail scheme*.

**Investment powers in eligible markets**

- 2 A statement that, subject to any restriction in the *rules* in this sourcebook or the *instrument constituting the scheme*, the *scheme* has the power to invest in any *eligible securities* market or *deal* on any *eligible derivatives* market to the extent that power to do so is conferred by *COLL 5* (Investment and borrowing powers).

**Unitholder's liability to pay**

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

**Base currency**

- 4 A statement of the *base currency* of the *scheme*.



### **Valuation and pricing**

- 5 A statement setting out the basis for the valuation and pricing of the *scheme*.

### **Duration of the scheme**

- 6 If the *scheme* is to be wound up after a particular period expires, a statement to that effect.

### **Object of the scheme**

- 7 A statement:
- (1) as to the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest; and
  - (2) that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of that property.

### **Government and public securities: investment in one issuer**

- 8 Where relevant, for a *UCITS scheme*, a statement in accordance with *COLL 5.2.12R(4)* (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the *scheme* may be invested in *government and public securities*.

### **Classes of unit**

- 9 A statement:
- (1) specifying the *classes* of *unit* that may be issued, and for a *scheme* which is an *umbrella*, the *classes* that may be issued in respect of each *sub-fund*; and
  - (2) if the rights of any *class* of *unit* differ, a statement describing those differences in relation to the differing *classes*.

### **Authorised fund manager's charges and expenses**

- 10 A statement setting out the basis on which the *authorised fund manager* may make a charge and recover expenses out of the *scheme property*.

### **Issue or cancellation directly through the ICVC or trustee**

- 11 Where relevant, a statement authorising the *issue* or *cancellation* of *units* to take place through the *ICVC* or *trustee* directly.

**In specie issue and cancellation**

- 12 Where relevant, a statement authorising payment for the *issue* or *cancellation* of *units* to be made by the transfer of assets other than cash.

**Restrictions on sale and redemption**

- 13 Where relevant, the restrictions which will apply in relation to the *sale* and *redemption* of *units* under *COLL* 6.2.16R (Sale and redemption).

**Voting at meetings**

- 14 The manner in which votes may be given at a meeting of *unitholders* under *COLL* 4.4.8R (Voting rights).

**Certificates**

- 15 A statement:
- (1) authorising the issue of *bearer certificates* if any, and how such *holders* are to identify themselves; and
  - (2) authorising the *person* responsible for the *register* to charge for issuing any document recording, or for amending, an entry on the *register*, other than on the *issue* or *sale* of *units*.

**Income**

- 16 A statement setting out the basis for the distribution or re-investment of income.

**Income equalisation**

- 17 Where relevant, a provision for *income equalisation*.

**Redemption or cancellation of units on breach of law or rules**

- 18 A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

**ICVCs: larger and smaller denomination shares**

19 A statement of the proportion of a *larger denomination share* represented by a *smaller denomination share* for any relevant *unit class*.

**ICVCs: resolution to remove a director**

20 A statement that the *ICVC* may (without prejudice to the requirements of regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of *unitholders*, remove a *director* before his period of office expires, despite anything else in the *ICVC's instrument of incorporation* or in any agreement between the *ICVC* and that *director*.

**ICVCs: unit transfers**

21 A statement that the *person* designated for the purposes of paragraph 4 of Schedule 4 to the *OEIC Regulations* (Share transfers) is the *person* who, for the time being, is the *ACD* of the *ICVC*.

**ICVCs: Charges and expenses**

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

**AUTs: governing law for a trust deed**

23 A statement that the *trust deed* is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.

**AUTs: trust deed to be binding and authoritative**

24 A statement that the *trust deed*:

- (1) is binding on each *unitholder* as if it had been a party to it and that it is bound by its provisions; and
- (2) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms.

**AUTs: declaration of trust**

25 A declaration that, subject to the provisions of the *trust deed* and all *rules* made under section 247 of the *Act* (Trust scheme rules) and for the time being in force:

- (1) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*; and
- (2) the sums standing to the credit of the *distribution account* are held by the *trustee* on trust to distribute or apply them in accordance with *COLL 6.8* (Income: accounting, allocation and distribution).

**AUTs: trustee's remuneration**

- 26 Where relevant, a statement authorising payments to the *trustee* by way of *remuneration* for its services to be paid (in whole or in part) out of the *scheme property*.

**AUTs: responsibility for the register**

- 27 A statement identifying the *person* responsible under the *rules* for the maintenance of the *register*.

**Umbrella scheme with only one sub-fund**

- 3.2.7 R (1) If, after the first *issue* of a *unit* in a *scheme* which is an *umbrella*, for a period of 24 consecutive *months*, *units* of less than two *sub-funds* are in *issue*, the *authorised fund manager* or, for an *ICVC*, its other *directors* must take such action as is necessary to reflect the fact the *scheme* is no longer an *umbrella* or cause *units* of more than one *sub-fund* to be in *issue*.
- (2) If (1) applies or is reasonably expected to become applicable by the *authorised fund manager* or, for an *ICVC*, its other *directors*, the *authorised fund manager* or other *directors* must notify the *unitholders* and the *FSA* of any action to comply with (1).
- (3) Paragraph (1) does not apply if before the expiry of the 24 *month* period, winding up of the *scheme* has commenced.

**UCITS obligations**

- 3.2.8 R (1) The instrument constituting a *UCITS scheme* may not be amended in such a way that it ceases to be a *UCITS scheme*.
- (2) If it is proposed to market *units* of a *UCITS scheme* in any *EEA State* other than the *United Kingdom*, the *authorised fund manager* of that *scheme* must notify the *FSA* of its proposal, specifying the *EEA State* concerned.
- (3) The *ICVC* or the *manager* must make the notification in (2) no later than the notification to the authorities in that *EEA State* of that proposal.

### 3.3 Units

#### Application

- 3.3.1 R This section applies to an *authorised fund manager*, an *ICVC* and the *trustee* of an *AUT*.

#### Classes of units

- 3.3.2 (1) The *instrument constituting the scheme* may provide for different  
G *classes of unit* to be issued in an *authorised fund* and, for a *scheme* which is an *umbrella*, provide that *classes of units* may be issued for each *sub-fund*.
- (2) In order to be satisfied that *COLL 3.2.2R* (Relationship between the instrument constituting the scheme and the rules) is complied with, the *FSA* will take into account the principles in (a) to (c) when considering proposals for *unit classes*:
- (a) a *unit class* should not provide any advantage for that *class* if that would result in prejudice to *unitholders* of any other *class*;
- (b) the nature, operation and effect of the new *unit class* should be capable of being explained clearly to prospective investors in the *prospectus*; and
- (c) the effect of the new *unit class* should not appear to be contrary to the purpose of any part of this sourcebook.

#### Currency class units

- 3.3.3 A *currency class unit* differs from other *units* mainly in that its *price*,  
G having been calculated initially in the *base currency*, will be quoted, and normally paid for, in the currency of the designation of the *class*. Income distributions will also be paid in the currency of designation of the *class*.

#### Currency class units: requirements

- 3.3.4 For a *currency class unit*:

R

- (1) the currency of the *class* concerned must not be the *base currency* (or, in the case of a *sub-fund* which, in accordance

with a statement in the *prospectus*, is to be valued in some other currency, the currency of the *class* may be in the *base currency*, but must not be in that other currency);

- (2) the *price* must be expressed in the currency of the *class* concerned;
- (3) any distribution must be paid in the currency of the *class* concerned; and
- (4) statements of amounts of *money* or values included in statements and in tax certificates must be given in the currency of the *class* concerned (whether or not also given in the *base currency*).

#### **Rights of unit classes**

- 3.3.5 R (1) If any *class* of *units* in an *authorised fund* has different rights from another *class* of *units* in that *fund*, the *instrument constituting the scheme* must provide how the proportion of the value of the *scheme property* and the proportion of income available for allocation attributable to each such *class* must be calculated.
- (2) For an *authorised fund* which is not an *umbrella*, the *instrument constituting the scheme* must not provide for any *class* of *units* in respect of which:
- (a) the extent of the rights to participate in the *capital property, income property* or *distribution account* would be determined differently from the extent of the corresponding rights for any other *class* of *units*; or
  - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class* of *units*.
- (3) For a *scheme* which is an *umbrella*, the provisions in (2)(a) apply to *classes* of *units* in respect of each *sub-fund* as if each *sub-fund* were a separate *scheme*.

- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class* of *units* and to another *class* of *units* that relates solely to:
  - (a) the accumulation of income by way of periodical credit to capital rather than distribution; or
  - (b) charges and expenses that may be taken out of the *scheme property* or payable by the *unitholders*; or
  - (c) the currency in which *prices* or values are expressed or payments made.

**Requirement: larger and smaller denomination shares in an ICVC**

- 3.3.6 R (1) This *rule* applies whenever the *instrument of incorporation* of an *ICVC* provides, in relation to any *class*, for *smaller denomination shares* and *larger denomination shares*.
- (2) Whenever a registered holding includes a number of *smaller denomination shares* that can be consolidated into a *larger denomination share* of the same *class*, the *ACD* must consolidate the relevant number of those *smaller denomination shares* into a *larger denomination share*.
- (3) The *ACD* may, to effect a transaction in *shares*, substitute for a *larger denomination share* the relevant number of *smaller denomination shares*, in which case (2) does not apply to the resulting smaller denomination shareholding or holdings until immediately after the completion of the transaction.

**Characteristics of larger and smaller denomination shares in an ICVC**

- 3.3.7 G Regulation 45 of the *OEIC Regulations* (Shares) allows the rights attached to a *share* in an *ICVC* of any *class* to be expressed in two denominations, in which case the ‘smaller’ denomination must be such proportion of the ‘larger’ denomination (a standard *share*) as is fixed by the *ICVC's instrument of incorporation* as described in *COLL* 3.2.6R19. This will enable holdings to consist of more or less than a complete number of *larger denomination shares*.

**Sub-division and consolidation of units**



- 3.3.8 (1) The *directors* of an *ICVC* or the *manager* of an *AUT* may,  
R unless expressly forbidden to do so by the *instrument constituting the scheme*, determine that:
- (a) each *unit* of any *class* is to be subdivided into two or more *units*; or
  - (b) *units* of any *class* are to be consolidated.
- (2) The *ICVC* or the *manager* must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each *unitholder* (or the first named of joint *unitholders*) of any sub-division or consolidation under (1).

#### **Guarantees and capital protection**

- 3.3.9 If there is any arrangement intended to result in a particular capital or  
R income return from a holding of *units* in an *authorised fund*, or any investment objective of giving protection to the capital value of, or income return from, such a holding:
- (1) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
    - (a) *unitholders* and the *authorised fund manager* or *depository*; or
    - (b) *unitholders* intended and not intended to benefit from the arrangement; and
  - (2) where, in accordance with any statement required by *COLL* 4.2.5R 27(c)(iv) (Table: contents of the prospectus), action is required by the *unitholders* to obtain the benefit of any guarantee, the *authorised fund manager* must provide reasonable notice in writing to *unitholders* before such action is required.

#### **Switching rights: umbrella schemes**

- 3.3.10 (1) In accordance with section 235(4) of the *Act* (Collective  
G investment schemes), the *participants* in a *scheme* which is an *umbrella* are entitled to exchange rights in one *sub-fund* for rights in another *sub-fund* of the *umbrella*.
- (2) To satisfy (1), where any *sub-fund* in a *scheme* which is an

*umbrella* has provisions in its *prospectus* limiting the *issue* of *units* in that *sub-fund*, the *authorised fund manager* should ensure that at least two *sub-funds* are able to issue *units* at any time.

## 4 Investor Relations

### 4.1 Introduction

#### Application

4.1.1 R This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

#### Purpose

4.1.2 G This chapter helps in achieving the *regulatory objective* of protecting *consumers* by ensuring *consumers* have access to up-to-date detailed information about an *authorised fund* particularly before buying *units* and thereafter an appropriate level of investor involvement exists by providing a framework for them to:

- (1) participate in the decisions on key issues concerning the *authorised fund*; and
- (2) be sent regular and relevant information about the *authorised fund*.

## 4.2 Pre-sale notifications

### Application

- 4.2.1 R This section applies to an *authorised fund manager*, an *ICVC* and any other *director* of an *ICVC*.

### Publishing the prospectus

- 4.2.2 R (1) A *prospectus* must be drawn up in English and published as a *document* by the *authorised fund manager* and, for an *ICVC*, it must be approved by the *directors*.
- (2) The *authorised fund manager* must ensure that the *prospectus*:
- (a) contains the information required by *COLL 4.2.5R* (Table: contents of the prospectus);
  - (b) does not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class of units*;
  - (c) does not contain any provision that conflicts with any *rule* in this sourcebook; and
  - (d) is kept up-to-date and that revisions are made to it, whenever appropriate.

### Availability of prospectus and long report

- 4.2.3 R (1) An *ICVC* or the *manager* of an *AUT* must:
- (a) supply a copy of the *scheme's* most recent *prospectus* drawn up and published in accordance with *COLL 4.2.2R* (Publishing the prospectus) free of charge to any *person* on request; and
  - (b) file a copy of the *scheme's* original *prospectus*, together with all revisions thereto, with the *FSA*.
- (2) An *ICVC* or the *manager* of an *AUT* which in either case is a *UCITS scheme* intending to *market units* in the territory of another *EEA State* must:
- (a) ensure that the following *documents* are drawn up in the, or one of the, official languages of the *EEA State* or a language approved by the *Host State regulator*:
    - (i) the *prospectus*;
    - (ii) the *instrument constituting the scheme*; and

- (iii) the latest annual and half-yearly long reports of the *scheme*;
  - (b) supply copies of the most recent version of the *documents* in (a) to any purchaser of *units* free of charge on request, and
  - (c) file copies of the most recent version of the *documents* in (a) with the *competent authority* of each such *Host State*, provided in the, or one of the, languages of that *State* or a language approved by the *competent authority* of that *State*.
- (3) An *authorised fund manager* must, upon the request of a *unitholder* in a *UCITS scheme* that it manages, provide information supplementary to the *prospectus* of that *scheme* relating to:
- (a) the quantitative limits applying to the risk management of that *scheme*;
  - (b) the methods used in relation to (a); and
  - (c) any recent development of the risk and yields of the main categories of *investment*.

#### **False or misleading prospectus**

- 4.2.4 R (1) The *authorised fund manager*:
- (a) must ensure that the *prospectus* of the *authorised fund* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it; and
  - (b) is liable to pay compensation to any *person* who has acquired any *units* in the *authorised fund* and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this *rule*.
- (2) The *authorised fund manager* is not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if, at the time when the *prospectus* was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:
- (a) it continued to take such reasonable care until the time of the relevant acquisition of *units* in the *scheme*; or

- (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or
  - (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
  - (d) the *person* who acquired the *units* was not materially influenced or affected by that statement or omission in making the decision to invest.
- (3) The *authorised fund manager* is also not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if:
- (a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of *persons* likely to acquire the *units* in question; or
  - (b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the *units* were acquired.
- (4) The *authorised fund manager* is not liable to pay compensation under (1)(b) if the *person* who acquired the *units* knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.
- (5) For the purposes of this *rule* a revised *prospectus* will be treated as a different *prospectus* from the original one.
- (6) References in this *rule* to the acquisition of *units* include references to contracting to acquire them.

**Table: contents of the prospectus**

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

**Document status**

- 1 A statement that the *document* is the *prospectus* of the *authorised fund* valid as at a particular date (which shall be the date of the *document*).

**Authorised fund**

- 2 A description of the *authorised fund* including:
- (a) its name;
  - (b) whether it is an *ICVC* or an *AUT* and that:
    - (i) *unitholders* are not liable for the debts of the

*authorised fund*;

- (ii) for an *ICVC*, a statement that the *sub-funds* of a *scheme* which is an *umbrella* are not ‘ring fenced’ and in the event of the *umbrella* being unable to meet liabilities attributable to any particular *sub-fund* out of the assets attributable to that *sub-fund*, that the remaining liabilities may have to be met out of the assets attributable to other *sub-funds*;
- (c) for an *ICVC*, the address of its head office and the address of the place in the *United Kingdom* for service on the *ICVC* of notices or other documents required or authorised to be served on it;
- (d) the effective date of the *authorisation order* made by the *FSA* and relevant details of termination, if the duration of the *authorised fund* is limited;
- (e) its *base currency*;
- (f) for an *ICVC*, the maximum and minimum sizes of its capital; and
- (g) the circumstances in which it may be wound up under the *rules* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up.

#### **Investment objectives and policy**

3 The following particulars of the investment objectives and policy of the *authorised fund*:

- (a) the investment objectives, including its financial objectives;
- (b) the *authorised fund's* investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
- (c) an indication of any limitations on that investment policy;
- (d) the description of assets which the *capital property* may consist of;
- (e) the proportion of the *capital property* which may consist of an asset of any description;
- (f) the description of transactions which may be effected on behalf

- of the *authorised fund* and an indication of any techniques and instruments or borrowing powers which may be used in the management of the *authorised fund*;
- (g) a list of the *eligible* markets through which the *authorised fund* may invest or *deal* in accordance with *COLL 5.2.10R(2)(b)* (Eligible markets: requirements);
  - (h) for an *ICVC*, a statement as to whether it is intended that the *scheme* will have an interest in any immovable property or movable property ((in accordance with *COLL 5.6.4R(2)* (Investment powers: general) or *COLL 5.2.8R(2)* (UCITS schemes: general)) for the direct pursuit of the *ICVC*'s business;
  - (i) where *COLL 5.2.12R(3)* (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the *scheme property* is or may be invested in *government and public securities* and the names of the individual states, local authorities or public international bodies in whose *securities* the *authorised fund* may invest more than 35% of the *scheme property*;
  - (j) the policy in relation to the exercise of borrowing powers by the *authorised fund*;
  - (k) for an *authorised fund* which may invest in other *schemes*, the extent to which the *scheme property* may be invested in the *units* of *schemes* which are managed by the *authorised fund manager* or by its *associate*;
  - (l) where a *scheme* invests principally in *scheme units*, *deposits* or *derivatives*, or replicates an index in accordance with *COLL 5.2.31R* or *COLL 5.6.23* (Schemes replicating an index), a prominent statement regarding this investment policy;
  - (m) where *derivatives* transactions may be used in a *scheme*, a prominent statement as to whether these transactions are for the purposes of hedging or meeting the investment objectives or both and the possible outcome of the use of *derivatives* on the risk profile of the *scheme*;
  - (n) information concerning the profile of the typical investor for



- whom the *scheme* is designed;
- (o) information concerning the historical performance of the *scheme* presented in accordance with *COB* 3.8.11R (Specific non-real time financial promotions: past performance);
  - (p) for a *non-UCITS retail scheme* which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the *authorised fund* may invest;
  - (q) for a *UCITS scheme* which invests a substantial portion of its assets in other *schemes*, a statement of the maximum level of management fees that may be charged to that *UCITS scheme* and to the *schemes* in which it invests;
  - (r) where the net asset value of a *UCITS scheme* is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; and
  - (s) for a *UCITS scheme*, a statement that any *unitholder* may obtain on request the types of information (which must be listed) referred to in *COLL* 4.2.3 R(3) (Availability of prospectus and long report).

#### **Reporting, distributions and accounting dates**

- 4 Relevant details of the reporting, accounting and distribution information which includes:
- (a) the accounting and distribution dates;
  - (b) procedures for:
    - (i) determining and applying income (including how any distributable income is paid);
    - (ii) unclaimed distributions; and
    - (iii) if relevant, calculating, paying and accounting for *income equalisation*;
  - (c) the *accounting reference date* and when the long report will be published in accordance with *COLL* 4.5.14R (Publication and availability of annual and half-yearly long report); and
  - (d) when the short report will be sent to *unitholders* in accordance with *COLL* 4.5.13R (Provision of short report).

#### **Characteristics of the units**

- 5 Information as to:
- (a) where there is more than one *class of unit* in *issue* or available for *issue*, the name of each such *class* and the rights attached to each *class* in so far as they vary from the rights attached to other *classes*;
  - (b) where the *instrument constituting the scheme* provides for the *issue of bearer certificates*, that fact and what procedures will operate for them;
  - (c) how *unitholders* may exercise their voting rights and what these amount to;
  - (d) where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required, in what circumstances it may be required; and
  - (e) for an *AUT*, the fact that the nature of the right represented by *units* is that of a beneficial interest under a trust.

**Authorised fund manager**

- 6 The following particulars of the *authorised fund manager*:
- (a) its name;
  - (b) the nature of its corporate form;
  - (c) the date of its incorporation;
  - (d) the address of its registered office;
  - (e) the address of its head office, if that is different from the address of its registered office;
  - (f) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*;
  - (g) if the duration of its corporate status is limited, when that status will or may cease; and
  - (h) the amount of its issued share capital and how much of it is paid up.

**Directors of an ICVC, other than the ACD**

- 7 Other than for the *ACD*:
- (a) the names and positions in the *ICVC* of any other *directors* (if

any); and

- (b) the manner, amount and calculation of the *remuneration* of such *directors*.

### **Depository**

8 The following particulars of the *depository*:

- (a) its name;
- (b) the nature of its corporate form;
- (c) the address of its registered office;
- (d) the address of its head office, if that is different from the address of its registered office;
- (e) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*; and
- (f) a description of its principal business activity.

### **Investment adviser**

9 If an *investment adviser* is retained in connection with the business of an *authorised fund*:

- (a) its name; and
- (b) where it carries on a significant activity other than providing services to the *authorised fund* as an *investment adviser*, what that significant activity is.

### **Auditor**

10 The name of the auditor of the *authorised fund*.

### **Contracts and other relationships with parties**

11 The following relevant details:

- (a) for an *ICVC*:
  - (i) a summary of the material provisions of the contract between the *ICVC* and the *authorised fund manager* which may be relevant to *unitholders* including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
  - (ii) the main business activities of each of the *directors*

- (other than those connected with the business of the *ICVC*) where these are of significance to the *ICVC*'s business;
- (iii) if any *director* is a *body corporate* in a *group* of which any other corporate *director* of the *ICVC* is a member, a statement of that fact; and
  - (iv) the main terms of each contract of service between the *ICVC* and a *director* in summary form;
- (b) the names of the *directors* of the *authorised fund manager* and the main business activities of each of the *directors* (other than those connected with the business of the *authorised fund*) where these are of significance to the *authorised fund's* business;
  - (c) a summary of the material provisions of the contract between the *ICVC* or the *manager* of the *AUT* and the *depository* which may be relevant to *unitholders*, including provisions relating to the *remuneration* of the *depository*;
  - (d) if an *investment adviser* retained in connection with the business of the *authorised fund* is a *body corporate* in a *group* of which any *director* of the *ICVC* or the *manager* of the *AUT* is a member, that fact;
  - (e) a summary of the material provisions of any contract between the *authorised fund manager* or the *ICVC* and any *investment adviser* which may be relevant to *unitholders*;
  - (f) if an *investment adviser* retained in connection with the business of the *authorised fund* has the authority of the *authorised fund manager* or the *ICVC* to make decisions on behalf of the *authorised fund manager* or the *ICVC*, that fact and a description of the matters in relation to which it has that authority;
  - (g) what functions (if any) the *authorised fund manager* has delegated and to whom; and
  - (h) in what capacity (if any), the *authorised fund manager* acts in relation to any other *collective investment schemes* and the

name of such *schemes*.

### **Register of unitholders**

12 Details of:

- (a) the address in the *United Kingdom* where the *register of unitholders*, and where relevant the *plan register* is kept and can be inspected by *unitholders*; and
- (b) the *registrar's* name and address.

### **Payments out of scheme property**

13 In relation to each type of payment from the *scheme property*, details of:

- (a) who the payment is made to;
- (b) what the payment is for;
- (c) the rate or amount where available;
- (d) how it will be calculated and accrued;
- (e) when it will be paid; and
- (f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.

### **Allocation of payments**

14 If, in accordance with *COLL 6.7.10R* (Allocation of payments to income or capital), the *authorised fund manager* and the *depository* have agreed that all or part of any income expense payments may be treated as a capital expense:

- (a) that fact;
- (b) the policy for allocation of these payments; and
- (c) a statement that this policy may result in capital erosion or constrain capital growth.

### **Moveable and immovable property (ICVC only)**

15 An estimate of any expenses likely to be incurred by the *ICVC* in respect of movable and immovable property in which the *ICVC* has an interest.

### **Valuation and pricing of scheme property**

16 In relation to the valuation and *pricing of scheme property*:

- (a) a provision that there must be only a single *price* for any *unit* as determined from time to time by reference to a particular *valuation point*;
- (b) details of:
  - (i) how the value of the *scheme property* is to be determined in relation to each purpose for which the *scheme property* must be valued;
  - (ii) how frequently and at what time or times of the *day* the *scheme property* will be regularly valued for *dealing* purposes and a description of any circumstance in which the *scheme property* may be specially valued;
  - (iii) where relevant, how the *price* of *units* of each *class* will be determined for *dealing* purposes; and
  - (iv) where and at what frequency the most recent *prices* will be published; and
- (c) if provisions in (a) and (b) do not take effect when the *instrument constituting the scheme* or (where appropriate) supplemental *trust deed* takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

## **Dealing**

17 The following particulars:

- (a) the procedures, the dealing periods and the circumstances in which the *authorised fund manager* will effect:
  - (i) the *sale* and *redemption* of *units* and the settlement of transactions (including the minimum number or value of *units* which one *person* may hold or which may be subject to any transaction of *sale* or *redemption*) for each *class* of *unit* in the *authorised fund*; and
  - (ii) any direct *issue* or *cancellation* of *units* by an *ICVC* or by the *trustee* (as appropriate) through the *authorised fund manager* in accordance with *COLL* 6.2.7R(2) (Issue and cancellation of units through an

- authorised fund manager);
- (b) the circumstances in which the *redemption* of *units* may be suspended;
  - (c) whether certificates will be issued in respect of registered *units*;
  - (d) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for the *issue* or *cancellation* of *units* in specie;
  - (e) the investment exchanges (if any) on which *units* in the *scheme* are listed or dealt;
  - (f) the circumstances and conditions for issuing *units* in an *authorised fund* which limit the *issue* of any *class of units* in accordance with *COLL 6.2.18R* (Limited issue);
  - (g) the circumstances and procedures for the limitation or deferral of *redemptions* in accordance with *COLL 6.2.19R* (Limited redemption) or *COLL 6.2.21R* (Deferred redemption); and
  - (h) in a *prospectus* available during the period of any *initial offer*:
    - (i) the length of the *initial offer* period;
    - (ii) the initial *price* of a *unit*, which must be in the *base currency*;
    - (iii) the arrangements for issuing *units* during the *initial offer*, including the *authorised fund manager's* intentions on investing the subscriptions received during the *initial offer*;
    - (iv) the circumstances when the *initial offer* will end;
    - (v) whether *units* will be *sold* or *issued* in any other currency; and
    - (vi) any other relevant details of the *initial offer*.

### **Dilution**

18 Details of what is meant by *dilution* including:

- (a) a statement explaining:
  - (i) that it is not possible to predict accurately whether *dilution* is likely to occur; and
  - (ii) which of the policies the *authorised fund manager* is

- adopting under *COLL* 6.3.8R(1) (Dilution) together with an explanation of how this policy may affect the future growth of the *authorised fund*; and
- (b) if the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment*, a statement of:
- (i) the *authorised fund manager's* policy in deciding when to require a *dilution levy*, including the *authorised fund manager's* policy on *large deals*, or when to make a *dilution adjustment*;
- (ii) the estimated rate or amount of any *dilution levy* or *dilution adjustment* based either on historical data or future projections; and
- (iii) the likelihood that the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment* and the basis (historical or projected) on which the statement is made.

#### **SDRT provision**

- 19 An explanation of:
- (a) what is meant by stamp duty reserve tax, *SDRT provision* and *large deals*; and
- (b) the *authorised fund manager's* policy on imposing an *SDRT provision* including its policy on *large deals*, and the occasions, and the likely frequency of the occasions, in which an *SDRT provision* may be imposed and the maximum rate of it (a usual rate may also be stated).

#### **Forward and historic pricing**

- 20 The *authorised fund manager's* normal basis of pricing under *COLL* 6.3.9R (Forward and historic pricing).

#### **Preliminary charge**

- 21 Where relevant, a statement authorising the *authorised fund manager* to make a *preliminary charge* and specifying the basis for and current amount or rate of that charge.

#### **Redemption charge**



22 Where relevant, a statement authorising the *authorised fund manager* to deduct a *redemption charge* out of the proceeds of *redemption*; and if the *authorised fund manager* makes a *redemption charge*:

- (a) the current amount of that charge or if it is variable, the rate or method of calculating it;
- (b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the *authorised fund manager* on request; and
- (c) how the order in which *units* acquired at different times by a *unitholder* is to be determined so far as necessary for the purposes of the imposition of the *redemption charge*.

### **General information**

23 Details of:

- (a) the address at which copies of the *instrument constituting the scheme*, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
- (b) the manner in which any notice or *document* will be served on *unitholders*;
- (c) the extent to which and the circumstances in which:
  - (i) the *scheme* is liable to pay or suffer tax on any appreciation in the value of the *scheme property* or on the income derived from the *scheme property*; and
  - (ii) deductions by way of withholding tax may be made from distributions of income to *unitholders* and payments made to *unitholders* on the *redemption* of *units*; and
- (d) for a *UCITS scheme*, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a *unitholder* and those to be paid out of *scheme property*.

### **Information on the umbrella**

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

- (a) that a *unitholder* is entitled to exchange *units* in one *sub-fund* for *units* in any other *sub-fund* (other than a *sub-fund* which has limited the *issue* of *units*);
- (b) that an exchange of *units* in one *sub-fund* for *units* in any other *sub-fund* is treated as a *redemption* and *sale* and will, for *persons* subject to *United Kingdom* taxation, be a realisation for the purposes of capital gains taxation;
- (c) that in no circumstances will a *unitholder* who exchanges *units* in one *sub-fund* for *units* in any other *sub-fund* be given a right by law to withdraw from or cancel the transaction;
- (d) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (e) what charges, if any, may be made on exchanging *units* in one *sub-fund* for *units* in any other *sub-fund*;
- (f) for each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *scheme* which is an *umbrella*; and
- (g) if there are *units* for less than two *sub-funds* in issue, the effect of *COLL 3.2.7R* (Umbrella scheme with only one sub-fund).

#### **Application of the prospectus contents to an umbrella**

25 For a *scheme* which is an *umbrella*, information required must be stated:

- (a) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (b) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

#### **Marketing in another EEA state**

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

- (a) what special arrangements have been made :

- (i) for paying in that *EEA State* amounts distributable to *unitholders* resident in that *EEA State*;
  - (ii) for *redeeming* in that *EEA State* the *units* of *unitholders* resident in that *EEA State*;
  - (iii) for inspecting and obtaining copies in that *EEA State* of the *instrument constituting the scheme* and amendments to it, the *prospectus* and the annual and half-yearly long report; and
  - (iv) for making public the *price* of *units* of each *class*; and
- (b) how the *ICVC* or the *manager* of an *AUT* will publish in that *EEA State* notice:
- (i) that the annual and half-yearly long report are available for inspection;
  - (ii) that a distribution has been declared;
  - (iii) of the calling of a meeting of *unitholders*; and
  - (iv) of the termination of the *authorised fund* or the revocation of its authorisation.

**Additional information**

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

- (a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating;
- (b) a clear and easily understandable explanation of any risks which investment in the *authorised fund* may reasonably be regarded as presenting for reasonably prudent investors of moderate means;

- (c) if there is any arrangement intended to result in a particular capital or income return from a holding of *units* in the *authorised fund* or any investment objective of giving protection to the capital value of, or income return from, such a holding:
  - (i) details of that arrangement or protection;
  - (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
  - (iii) a description of the risks that could affect achievement of that return or protection; and
  - (iv) details of the arrangements by which the *authorised fund manager* will notify *unitholders* of any action required by the *unitholders* to obtain the benefit of the guarantee; and
- (d) whether any notice has been given to *unitholders* of the *authorised fund manager's* intention to propose a change to the *scheme* and if so, its particulars.

#### **Guidance on contents of the prospectus**

- 4.2.6 G (1) In relation to *COLL* 4.2.5R 3(b) the *prospectus* might include:
- (a) a description of the extent (if any) to which that policy does not envisage the *authorised fund* remaining fully invested at all times;
  - (b) for a *non-UCITS retail scheme* which may invest in immovable property:
    - (i) the maximum extent to which the *scheme property* may be invested in immovables; and
    - (ii) a statement of the policy of the *authorised fund manager* in relation to insurance and immovables forming part of the *scheme property*; and

- (c) a description of any restrictions in the assets in which investment may be made, including restrictions in the extent to which the *authorised fund* may invest in any category of asset, indicating (if appropriate) where the restrictions are more onerous than those imposed by *COLL 5* (Investment and borrowing powers).
- (2) In relation to *COLL 4.2.5R 13*, the type of payments are likely to include management fees (such as periodic and performance fees), *depository* fees, custodian fees, transaction fees, registrar fees, audit fees and FSA fees. Expenses which represent properly incurred costs of the *scheme* may also be treated as a type of payment for this purpose.
- (3) In relation to *COLL 4.2.5R 27*, the *prospectus* might include a prominent statement of non-accountability referred to in *COLL 6.7.16G* (Exemptions from liability to account for profits).

### 4.3 Approvals and notifications

#### Application

4.3.1 R This section applies to an *authorised fund manager*.

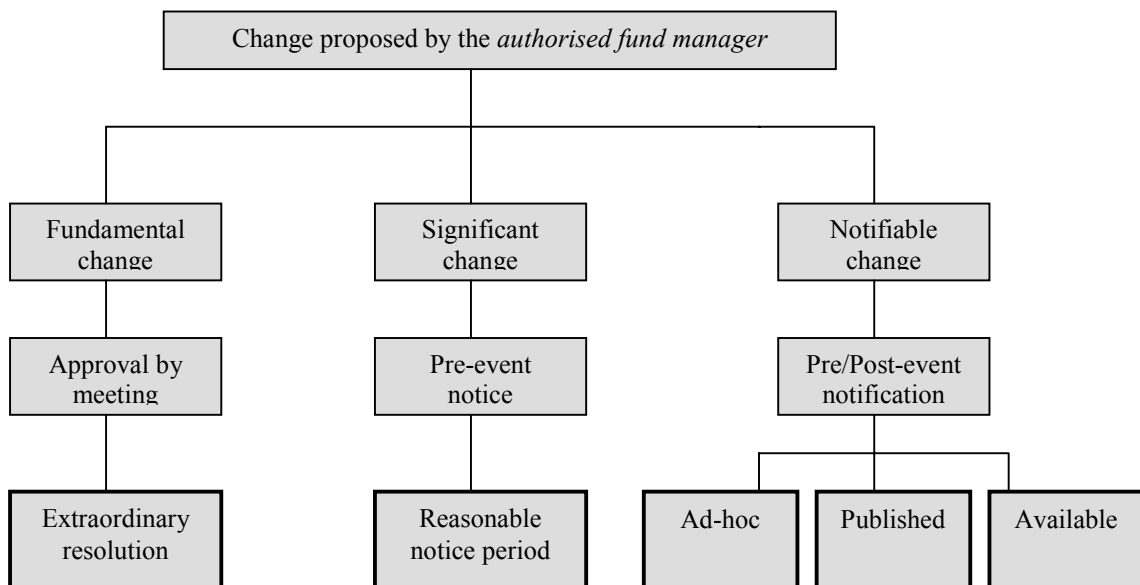
#### Explanation

4.3.2 G (1) The diagram in *COLL 4.3.3G* explains how an *authorised fund manager* should treat changes it is proposing to a *scheme* and provides an overview of the *rules* and *guidance* in this section.

- (2) Regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FSA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depository* or a change to the *instrument constituting the scheme*. This should be kept in mind when considering any proposed change.

#### Diagram: Change event

4.3.3 G This diagram belongs to *COLL 4.3.2G*.



#### Fundamental change requiring prior approval by meeting

4.3.4 R (1) The *authorised fund manager*, must, by way of an *extraordinary resolution*, obtain prior approval from the *unitholders* for any proposed change to the *scheme* which, in accordance with (2), is a fundamental change.

- (2) A fundamental change is a change or event which:
  - (a) changes the purposes or nature of the *scheme*; or
  - (b) may materially prejudice a *unitholder*; or
  - (c) alters the risk profile of the *scheme*; or
  - (d) introduces any new type of payment out of *scheme property*.

### **Guidance on fundamental changes**

- 4.3.5 G (1) Any change may be fundamental depending on its degree of materiality and effect on the *scheme* and its *unitholders*. Consequently an *authorised fund manager* will need to determine whether in each case a particular change is fundamental in nature or not.
- (2) For the purpose of *COLL* 4.3.4R(2)(a) to (c), a fundamental change to a *scheme* is likely to include:
- (a) any proposal for a *scheme of arrangement* referred to in *COLL* 7.6.2R (Schemes of arrangement: requirements);
  - (b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
  - (c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity *investments*;
  - (d) a change in the investment policy to allow the *authorised fund* to invest in *derivatives* as an investment strategy which increases its volatility;
  - (e) a change to the characteristics of a *scheme* to distribute income annually rather than *monthly*; or
  - (f) the introduction of *limited redemption arrangements*.

### **Significant change requiring pre-event notification**

- 4.3.6 R (1) The *authorised fund manager* must give prior written notice to *unitholders*, in respect of any proposed change to the operation of a *scheme* that, in accordance with (2), constitutes a significant change.
- (2) A significant change is a change or event which is not fundamental in accordance with *COLL* 4.3.4R but which:
- (a) affects a *unitholder's* ability to exercise his rights in relation to

- his investment; or
  - (b) would reasonably be expected to cause the *unitholder* to reconsider his participation in the *scheme*; or
  - (c) results in any increased payments out of the *scheme property* to an *authorised fund manager* or any other *director* of an *ICVC* or an *associate* of either; or
  - (d) materially increases other types of payment out of *scheme property*.
- (3) The notice period in (1) must be of a reasonable length (and must not be less than 60 *days*).

#### **Guidance on significant changes**

- 4.3.7 G (1) Changes may be significant depending in each case on their degree of materiality and effect on the *scheme* and its *unitholders*. Consequently the *authorised fund manager* will need to determine whether in each case a particular change is significant in nature or not.
- (2) For the purpose of *COLL* 4.3.6R a significant change is likely to include:
- (a) a change in the method of *price* publication;
  - (b) a change in any operational policy such as dilution policy or allocation of payments policy; or
  - (c) an increase in the *preliminary charge* where *units* are purchased through a *group savings plan*.

#### **Notifiable changes**

- 4.3.8 R (1) The *authorised fund manager* must inform *unitholders* in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the *scheme*.
- (2) A notifiable change is a change or event, other than a fundamental change under *COLL* 4.3.4R or a significant change under *COLL* 4.3.6R, which a *unitholder* must be made aware of unless the *authorised fund manager* concludes that the change is insignificant.

#### **Guidance on notifiable changes**



- 4.3.9 G (1) The circumstances causing a notifiable change may or may not be within the control of the *authorised fund manager*.
- (2) For the purpose of COLL 4.3.8R (Notifiable changes) a notifiable change might include:
- (a) a change of named *investment manager* where the *authorised fund* has been marketed on the basis of that individual's involvement;
  - (b) a significant political event which impacts on the *authorised fund* or its operation;
  - (c) a change to the time of the *valuation point*;
  - (d) the introduction of limited issue arrangements; or
  - (e) a change of the *depository* or a change in the name of the *authorised fund*.
- (3) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently the *authorised fund manager* will need to assess each change or event individually.
- (4) An appropriate manner of notification could include:
- (a) sending an immediate notification to the *unitholder*;
  - (b) publishing the information on a website; or
  - (c) the information being included in the next long report of the *scheme*.

## 4.4 Meetings of unitholders and service of notices

### Application

- 4.4.1 R This section applies to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

### General meetings

- 4.4.2 R (1) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* may convene a general meeting of *unitholders* at any time.
- (2) The *unitholders* may request the convening of a general meeting by a requisition which must:
- (a) state the objects of the meeting;
  - (b) be dated;
  - (c) be signed by *unitholders* who, at that date, are registered as the *unitholders* of *units* representing not less than one-tenth in value (or such lower proportion stated in the *instrument constituting the scheme*) of all of the *units* then in *issue*; and
  - (d) be deposited at the head office of the *ICVC* or with the *trustee*.
- (3) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* must on receipt of a requisition that complies with (2), immediately convene a general meeting of the *authorised fund* for a date no later than eight weeks after receipt of the requisition.

### Class meetings

- 4.4.3 R This section applies, unless the context otherwise requires, to *class meetings* by reference to the *units* of the *class* concerned and the *unitholders* and *prices* of such *units*.

### Special meaning of unitholder in COLL 4.4

- 4.4.4 R (1) Unless a *unit* in the *authorised fund* is a *participating security*, in this section "*unitholders*" means *unitholders* as at a cut-off date selected by the *authorised fund manager* which is a reasonable time before notices of the relevant meeting are sent out.
- (2) If any *unit* in the *authorised fund* is a *participating security*, a registered *unitholder* of such a *unit* is entitled to receive a notice of a meeting or a notice of an adjourned meeting under *COLL 4.4.5R*

(Notice of general meetings), if entered on the *register* at the close of business on a *day* to be determined by the *authorised fund manager*, which must not be more than 21 *days* before the notices of the meeting are sent out.

- (3) For the purposes of (2), in *COLL* 4.4.6R (Quorum) to 4.4.11R (Chairman, adjournments and minutes) “*unitholders*” in relation to those *units* means:
- (a) the *persons* entered on the *register* at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting; or
  - (b) in the case of bearer *units*, *unitholders* of bearer *units* which were in *issue* at the time applicable under (a).

#### **Notice of general meetings**

- 4.4.5 R (1) Where the *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* decide to convene a general meeting of *unitholders*:
- (a) each *unitholder* must be given at least 14 *days* written notice, inclusive of the date on which the notice is first served and the day of the meeting; and
  - (b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the *depository*.
- (2) The accidental omission to give notice to, or the non-receipt of notice by, any *unitholder* does not invalidate the proceedings at any meeting.
- (3) Notice of an adjourned meeting of *unitholders* must be given to each *unitholder*, stating that while two *unitholders* present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with *COLL* 4.4.6R(3), should two such *unitholders* not be present after a reasonable time of convening of the meeting.
- (4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.

#### **Quorum**

- 4.4.6 R (1) The quorum required to conduct business at a meeting of *unitholders* is two *unitholders*, present in person or by proxy.
- (2) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:
- (a) if convened on the requisition of *unitholders*, must be dissolved; and
- (b) in any other case, must stand adjourned to:
- (i) a day and time which is seven or more *days* after the day and time of the meeting; and
- (ii) a place to be appointed by the chairman.
- (3) If, at an adjourned meeting under (2)(b), a quorum is not present after a reasonable time from the time for the meeting, one *person* entitled to be counted in a quorum present at the meeting shall constitute a quorum.

#### **Resolutions**

- 4.4.7 R (1) Except where an *extraordinary resolution* is specifically required or permitted, any resolution of *unitholders* is passed by a simple majority of the votes validly cast at a general meeting of *unitholders*.
- (2) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.

#### **Voting rights**

- 4.4.8 R (1) On a show of hands every *unitholder* who is present in person has one vote.
- (2) On a poll:
- (a) votes may be given either personally or by proxy or in another manner permitted by the *instrument constituting the scheme*;
- (b) the voting rights for each *unit* must be the proportion of the voting rights attached to all of the units in *issue* that the *price* of the *unit* bears to the aggregate *price* or *prices* of all of the *units* in *issue*:
- (i) if any *unit* is a *participating security*, at the time determined under *COLL* 4.4.4R(2) (Special meaning of unitholder in *COLL* 4.4);

- (ii) otherwise at the date specified in *COLL 4.4.4R(1)*; and
  - (c) a *unitholder* need not use all his votes or cast all his votes in the same way.
- (3) For joint *unitholders* of a *unit*, only the vote of the first named in the *register* of *unitholders* can be taken.
  - (4) No *director* of the *ICVC* or the *manager* can be counted in the quorum of, and no such *director* or the *manager* nor any of their *associates* may vote at, any meeting of the *authorised fund*.
  - (5) The prohibition in (4) does not apply to any *units* held on behalf of, or jointly with, a *person* who, if himself the registered *unitholder*, would be entitled to vote and from whom the *director*, the *manager* or its *associate* have received voting instructions.
  - (6) For the purpose of this section, *units* held, or treated as held, by the *authorised fund manager* or any other *director* of the *ICVC*, must not, except as mentioned in (5), be regarded as being in *issue*.

#### **Right to demand a poll**

- 4.4.9 R (1) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the chairman;
  - (b) at least two *unitholders*; or
  - (c) the *depository*.
- (2) Unless a poll is demanded in accordance with (1), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

#### **Proxies**

- 4.4.10 R (1) A *unitholder* may appoint another *person* to attend a general meeting and vote in his place.
- (2) Unless the *instrument constituting the scheme* provides otherwise, a *unitholder* may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.
- (3) Every notice calling a meeting of a *scheme* must contain a reasonably prominent statement that a *unitholder* entitled to attend and vote may

appoint a proxy.

- (4) For the appointment to be effective, any *document* relating to the appointment of a proxy must not be required to be received by the *ICVC* or any other *person* more than 48 hours before the meeting or adjourned meeting

#### **Chairman, adjournment and minutes**

- 4.4.11 R (1) A meeting of *unitholders* must have a chairman, nominated by the *depository*.
- (2) If the chairman is not present after a reasonable time from the time for the meeting, the *unitholders* present must choose one of them to be chairman.
  - (3) The chairman:
    - (a) may, with the consent of any meeting of *unitholders* at which a quorum is present; and
    - (b) must, if so directed by the meeting;  
adjourn the meeting from time to time and from place to place.
  - (4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
  - (5) The *authorised fund manager* must ensure that:
    - (a) minutes of all resolutions and proceedings at every meeting of *unitholders* are made and kept; and
    - (b) any minute made in (a) is signed by the chairman of the meeting of *unitholders*.
  - (6) Any minute referred to in (5)(b) is conclusive evidence of the matters stated in it.

#### **Notices to unitholders**

- 4.4.12 R (1) Where this sourcebook requires any notice or *document* to be served upon a *unitholder*, it is duly served :
- (a) for *units* held by a registered *unitholder*, if it is:
    - (i) delivered to the *unitholder's* address as appearing in the *register*; or

- (ii) delivered by using an electronic medium in accordance with *COLL 4.4.13R* (Other notices); or
- (b) for *units* represented by *bearer certificates*, if given in the manner provided for in the *prospectus*.
- (2) Any notice or *document* served by post is deemed to have been served on the second *business day* following the *day* on which it is posted.
- (3) Any *document* left at a registered address or delivered other than by post is deemed to have been served on that *day*.

#### **Other notices**

- 4.4.13 R (1) Any *document* or notice to be served on or information to be given to, any *person*, including the *FSA*, must be in legible form.
- (2) For the purposes of this *rule*, any form is legible form which:
- (a) is consistent with the *ICVC's*, the *directors'*, the *authorised fund manager's* or the *depository's* knowledge of how the recipient of the *document* wishes or expects to receive the *document*;
  - (b) is capable of being provided in hard copy by the *authorised fund manager*, the *depository* or any other director of the *ICVC*;
  - (c) enables the recipient to know or record the time of receipt; and
  - (d) is reasonable in the context.
- (3) In this sourcebook, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.

#### **References to writing and electronic documents**

- 4.4.14 G In this sourcebook references to writing and the use of electronic media should be construed in accordance with *GEN 2.2.14R* (References to writing) and its related *guidance* provisions.

#### **Service of notice Regulations**

- 4.4.15 G The provisions in this section relating to the service and delivery of notices and *documents* both to *unitholders* and to the *FSA*, disapply the provisions of The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) under the power in Regulation 1(6) of those Regulations.

## 4.5 Reports and accounts

### Application

- 4.5.1 R The *rules* and *guidance* in this section apply to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

### Explanation

- 4.5.2 G In order to provide the *unitholders* with regular and relevant information about the progress of the *authorised fund*, the *authorised fund manager* must:
- (1) prepare a short report and a long report half-yearly and annually;
  - (2) send the short report to all *unitholders*; and
  - (3) make the long report available to *unitholders* on request.

### Preparation of long and short reports

- 4.5.3 R
- (1) The *authorised fund manager* must for each *annual accounting period* and *half-yearly accounting period*, prepare a short report and a long report for a *scheme*.
  - (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* must prepare a short report for each *sub-fund* but this is not necessary for the *umbrella* as a whole.
  - (3) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
  - (4) The first *annual accounting period* of a *scheme* must begin:
    - (a) on the first *day* of any period of *initial offer*; or
    - (b) in any other case, on the date of the relevant *authorisation order*.

### ICVC requirements

- 4.5.4 G
- (1) The *OEIC Regulations* contain requirements for the preparation of annual and half-yearly reports and make the *directors* of an *ICVC* responsible for the preparation of annual and half-yearly reports on the *ICVC*.
  - (2) Regulations 66 (Reports: preparation), 67 (Reports: accounts) and 68 (Reports: voluntary revision) of the *OEIC Regulations* also contain a



number of other requirements relating to reports and accounts of an *ICVC*.

### **Contents of a short report**

- 4.5.5 R (1) The short report for an *authorised fund*, or for a *scheme* which is an *umbrella*, its *sub-fund*, must contain for the relevant period:
- (a) the name of the *scheme* or *sub-fund*, its stated investment objectives and policy for achieving those objectives, a brief assessment of its risk profile and the name and address of the *authorised fund manager*;
  - (b) a review of the *scheme* or *sub-fund's* investment activities and investment performance during the period;
  - (c) a performance record consistent with *COLL 4.5.10R(1)* (Comparative table) so as to enable a *unitholder* to put into context the results of the investment activities of the *scheme* during the period;
  - (d) sufficient information to enable *unitholders* to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period;
  - (e) any other significant information which would reasonably enable *unitholders* to make an informed judgement on the activities of the *scheme* or *sub-fund* during the period and the results of those activities at the end of the period; and
  - (f) a statement that the latest long report is available on request.
- (2) The *authorised fund manager* must take reasonable steps to ensure that the short report is structured and written in such a way that it can be easily understood by the average investor.
- (3) The short report must form a separate stand-alone *document* which must not include any extraneous material.
- (4) The inclusion in a single *document* of the short reports of more than one of an *authorised fund manager's schemes* with the same accounting periods, or of more than one *sub-fund* in an *umbrella*, is not a contravention of (3) if each such report is discrete and easily identifiable.

- (5) The *authorised fund manager* must ensure that the information given in the short report is consistent with the long report for the relevant accounting period prepared under *COLL 4.5.7R* (Contents of the annual long report) or *COLL 4.5.8R* (Contents of the half-yearly long report).

#### **Significant information to be contained in the short report**

- 4.5.6 G For the purpose of *COLL 4.5.5R*(1)(d) and (e) the *authorised fund manager* should consider including the following as sufficient and significant information:
- (1) particulars of any fundamental change to the *scheme* which required *unitholder* approval by meeting during the period;
  - (2) particulars of any significant change to the operation of the *scheme* requiring pre-notification, but this need only be given if the change impacts on the *unitholders'* ability to make an informed judgement on the activities of the *scheme*;
  - (3) particulars of any other developments in relation to the investment policy of the *scheme* or the instruments used by it during the period;
  - (4) the total expense ratio at the end of the period;
  - (5) particulars of any qualification of the reports of the auditor and *depository*; and
  - (6) particulars of any income or distribution relating to the period.

#### **Contents of the annual long report**

- 4.5.7 R (1) An annual long report on an *authorised fund*, other than a *scheme* which is an *umbrella*, must contain:
- (a) the full accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
  - (b) the report of the *authorised fund manager* in accordance with *COLL 4.5.9R* (Authorised fund manager's report);
  - (c) the comparative table in accordance with *COLL 4.5.10R* (Comparative table);

- (d) the report of the *depository* in accordance with *COLL 4.5.11R* (Report of the depository); and
  - (e) the report of the auditor in accordance with *COLL 4.5.12R* (Report of the auditor).
- (2) An annual long report on a *scheme* which is an *umbrella* must contain:
- (a) for each *sub-fund*:
    - (i) the full accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
    - (ii) the report of the *authorised fund manager* in accordance with *COLL 4.5.9R*; and
    - (iii) the comparative table in accordance with *COLL 4.5.10R*;
  - (b) the aggregation of the accounts required by (a)(i) for each *sub-fund*;
  - (c) the report of the *depository* in accordance with *COLL 4.5.11R*; and
  - (d) the report of the auditor in accordance with *COLL 4.5.12R*.
- (3) The *directors* of an *ICVC* or the *manager* of an *AUT* must ensure that the accounts referred to in (1)(a) and (2)(a) give a true and fair view of the net income and the net gains and the losses on the *scheme property* of the *authorised fund*, or, in the case of (2)(a), the *sub-fund*, for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period.

### **Contents of the half-yearly long report**

- 4.5.8 R (1) A half-yearly long report on an *authorised fund*, other than for a *scheme* which is an *umbrella*, must contain:
- (a) the full accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
  - (b) the report of the *authorised fund manager* in accordance with *COLL 4.5.9R* (Authorised fund manager's report).

- (2) A half-yearly long report on a *scheme* which is an *umbrella* must contain:
- (a) for each *sub-fund*:
    - (i) full accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
    - (ii) the report of the *authorised fund manager* in accordance with *COLL 4.5.9R*; and
  - (b) the aggregation of the accounts in (a)(i) for each *sub-fund*.

#### **Authorised fund manager's report**

4.5.9 R The matters set out in (1) to (12) must be included in any *authorised fund manager's* report, except where otherwise indicated:

- (1) the names and addresses of :
  - (a) the *authorised fund manager*;
  - (b) the *depository*;
  - (c) the *registrar*;
  - (d) any *investment adviser*;
  - (e) the auditor; and
  - (f) for a *scheme* which invests in immovables, the *standing independent valuer*;
- (2) (for an *ICVC*), the names of any *directors* other than the *ACD*;
- (3) a statement of the authorised status of the *scheme*;
- (4) (for an *ICVC*) a statement that the *unitholders* of the *ICVC* are not liable for the debts of the *ICVC*;
- (5) the investment objectives of the *authorised fund*;
- (6) the policy for achieving those objectives;
- (7) a review of the investment activities during the period to which the report relates;
- (8) particulars of any fundamental changes in accordance with *COLL 4.3.4R* (Fundamental change requiring prior approval by meeting) made since the date of the last report;

- (9) particulars of any significant changes which have occurred in accordance with *COLL* 4.3.6R (Significant change requiring pre-event notification) since the date of the last report;
- (10) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during this period and the results of those activities as at the end of that period;
- (11) for a report on an *umbrella* prepared in accordance with *COLL* 4.5.7R or *COLL* 4.5.8R:
  - (a) a statement to the effect that, as a *sub-fund* is not a legal entity, if the assets attributable to any *sub-fund* were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other *sub-funds* of the *ICVC*; and
  - (b) information required by (1) to (10) must be given for each *sub-fund*, if it would vary from that given in respect of the *umbrella* as a whole; and
- (12) for a *UCITS scheme* which invests a substantial proportion of its assets in other *schemes*, a statement as to the maximum proportion of management fees charged to the *scheme* itself and to other *schemes* in which that *scheme* invests.

### **Comparative table**

- 4.5.10 R The comparative table required by *COLL* 4.5.7R(1)(c) (Contents of the annual long report) must set out:
- (1) a performance record over the last five calendar years, or if the *authorised fund* has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
    - (a) the highest and the lowest *price* of a *unit* of each *class* in issue during each of those years; and
    - (b) the net income distributed (or, for *accumulation units*, allocated) for a *unit* of each *class* in issue during each of those years, taking account of any sub-division or consolidation of *units* that

- occurred during that period;
- (2) as at the end of each of the last three *annual accounting periods* (or all of the *authorised fund's annual accounting periods*, if less than three):
    - (a) the total net asset value of the *scheme property* at the end of each of those years;
    - (b) the net asset value per *unit* of each *class*; and
    - (c) (i) (for a report of the *directors* of an *ICVC*) the number of *units* of each *class* in issue; or
      - (ii) (for a report of the *manager* of an *AUT*) the number of *units* of each *class* in existence or treated as in existence; and
  - (3) if, in the period covered by the table:
    - (a) the *authorised fund* has been the subject of any event (such as a *scheme of arrangement*) having a material effect on the size of the *authorised fund*, but excluding any *issue* or *cancellation* of *units* for cash; or
    - (b) there have been changes in the investment objectives of the *authorised fund*;

an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

### **Report of the depositary**

- 4.5.11 R (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The annual report must contain:
- (a) a description, which may be in summary form, of the duties of the *depositary* under *COLL 6.6.4R* (General duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
  - (b) a statement whether, in any material respect:
    - (i) the *issue*, *sale*, *redemption* and *cancellation*, and calculation of the *price* of the *units* and the application of the *authorised fund's* income, have not been carried out in

accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the scheme*; and

- (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

### **Report of the auditor**

4.5.12 R The *authorised fund manager* must ensure that the report of the auditor to the *unitholders* must include a statement:

- (1) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the *IMA SORP*, the *rules* in this sourcebook, and the *instrument constituting the scheme*;
- (2) whether, in the auditor's opinion, the accounts give a true and fair view of the net income and the net gains or losses of the *scheme property* of the *authorised fund* (or, as the case may be, the *scheme property* attributable to the *sub-fund*) for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period;
- (3) whether the auditor is of the opinion that proper accounting records for the *authorised fund* (or, as the case may be, *sub-fund*) have not been kept or whether the accounts are not in agreement with those records;
- (4) whether the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and
- (5) whether the auditor is of the opinion that the information given in the report of the *directors* or in the report of the *authorised fund manager* for that period is consistent with the accounts.

### **Provision of short report**

- 4.5.13 R (1) The *authorised fund manager* must, within four *months* after the end of each *annual accounting period* and within two *months* after the end of each *half-yearly accounting period*, respectively provide free of charge the short report in accordance with (2).
- (2) The *authorised fund manager* must send a copy of the report :

- (a) to each *unitholder* (or to the first named of joint *unitholders*) entered in or entitled to be entered in the *register* at the close of business on the last *day* of the relevant accounting period; and
- (b) to each *unitholder* of bearer *units* at his request.

- =
- (3) *Unitholders* in a *scheme* which is an *umbrella* must be provided with a report relating to the particular *sub-fund* in which they hold *units* subject to providing the long report on the *umbrella* on request in accordance with *COLL* 4.5.14R(2)(a).

#### **Publication and availability of annual and half-yearly long report**

- 4.5.14 R (1) The *authorised fund manager* must, within four *months* after the end of each *annual accounting period* and two *months* after the end of each *half-yearly accounting period* respectively, make available and publish the long report prepared in accordance with *COLL* 4.5.7R (Contents of the annual long report) or *COLL* 4.5.8R (Contents of the half-yearly long report).
- (2) The reports referred to in (1) must:
- (a) be supplied free of charge to *unitholders* who request it;
  - (b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;
  - (c) for a *UCITS scheme*, be available for inspection by the public at a place designated by the *authorised fund manager* in each *EEA State* other than the *United Kingdom* in which *units* in the *authorised fund* are marketed, in English and in at least one of that other *EEA State's* official languages; and
  - (d) be sent to the *FSA*.



## 5 Investment and borrowing powers

### 5.1 Introduction

#### Application

- 5.1.1 R (1) *COLL 5.1 to COLL 5.5 apply to the authorised fund manager and the depositary of an authorised fund, and to an ICVC, which is or ever has been a UCITS scheme.*
- (2) *COLL 5.1, COLL 5.4 and COLL 5.6 apply to the authorised fund manager and depositary of an authorised fund, and to an ICVC, which is a non-UCITS retail scheme.*
- (3) Paragraph (2) ceases to apply if a *non-UCITS retail scheme* converts to be authorised as a *UCITS scheme*.

#### Purpose

- 5.1.2 G (1) This chapter helps in achieving the *regulatory objective* of protecting *consumers* by laying down minimum standards for the investments that may be held by an *authorised fund*. In particular:
- (a) the proportion of *transferable securities* and *derivatives* that may be held by an *authorised fund* is restricted if those *transferable securities* and *derivatives* are not listed on an *eligible market*; the intention of this is to restrict investment in *transferable securities* or *derivatives* that cannot be accurately valued and readily disposed of; and
- (b) *authorised funds* are required to comply with a number of investment *rules* that require the spreading of risk.
- (2) Table 5.1.4G gives an overview of the permissible investments and maximum investment limits for *UCITS schemes* and *non-UCITS retail schemes*.

#### Treatment of obligations

- 5.1.3 R (1) Where a *rule* in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the *authorised fund* under any other of those *rules* has also to be provided for.
- (2) Where a *rule* in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered:
- (a) it must be assumed that in applying any of those *rules*, the *authorised fund* must also simultaneously satisfy any other obligation relating to cover; and
- (b) no element of cover must be used more than once.

#### Indicative overview of investment and borrowing powers

5.1.4 G This table belongs to *COLL 5.1.2G (2)*.

<i>Scheme investments and investment techniques</i>	<i>Limits for UCITS schemes</i>		<i>Limits for non-UCITS retail schemes</i>	
	<u>Permissible investment</u>	<u>Maximum limit</u>	<u>Permissible investment</u>	<u>Maximum limit</u>
<i>Approved securities</i>	Yes	None	Yes	None
<i>Transferable securities</i> that are not <i>approved securities</i>	Yes	10%	Yes	20%
<i>Government and public securities</i>	Yes	None	Yes	None
<i>Regulated schemes</i>	Yes	None	Yes	None
<i>Unregulated schemes</i>	No	N/A	Yes	20%
<i>Warrants</i>	Yes	None	Yes	None
<i>Investment trusts</i>	Yes	None	Yes	None
<i>Deposits</i>	Yes	None	Yes	None
<i>Derivatives</i>	Yes	None	Yes	None
Immovables (i.e real property)	No	N/A	Yes	None
Gold	No	N/A	Yes	10%
Hedging	Yes	None	Yes	None
<i>Stock lending</i>	Yes	None	Yes	None
Underwriting	Yes	None	Yes	None

Borrowing	Yes	10% (T)	Yes	10%
Cash and <i>near cash</i>	Yes	None	Yes	None
Note:	Meaning of terms used:			
A percentage	an upper limit (though there may be limits of other kinds).			
"(T)"	temporary only- see <i>COLL 5.5.4R(4)</i>			
"N/A"	Not applicable			

## 5.2 General investment powers and limits for UCITS schemes

### Application

- 5.2.1 R This section applies to an *ICVC*, an *ACD*, a *manager* of an *AUT*, a *depository* of an *ICVC* and a *trustee* of an *AUT*, where such *ICVC* or *AUT* is a *UCITS scheme*, in accordance with *COLL 5.2.2R* (Table of application).

### Table of application

- 5.2.2 R This table belongs to *COLL 5.2.1R*.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Manager of an AUT</i>	<i>Depository of an ICVC</i>	<i>Trustee of an AUT</i>
5.2.3R to 5.2.9R		x	x		
5.2.10R(1)		x	x		
5.2.10R(2)(a)&(b)		x	x		
5.2.10R(2)(c)				x	x
5.2.10R(3)		x	x		
5.2.11R to 5.2.21R		x	x		
5.2.22R	x		x		
5.2.23R(1)	x	x	x		
5.2.23R(2)	x	x	x	x	x
5.2.23R(3)	x	x	x	x	x
5.2.24R		x	x		
5.2.25G		x	x	x	x
5.2.26R		x	x		
5.2.27R	x				
5.2.28R			x		
5.2.29R to 5.2.33R	x	x	x		
Note: x means "applies"					

### Prudent spread of risk

- 5.2.3 R (1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *UCITS scheme* as stated in the most recently published *prospectus*, the *scheme property* of the *UCITS scheme* aims to provide a prudent spread of risk.
- (2) The *rules* in this section relating to spread of investments do not apply until the expiry of a period of six *months* after the date of which the *authorisation order*, in respect of the *UCITS scheme*,

takes effect or on which the *initial offer* commenced, if later, provided that (1) is complied with during such period.

**Investment powers: general**

- 5.2.4 R The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections *COLL 5.2 to COLL 5.5* that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the scheme* may further restrict:
- (1) the kind of property in which the *scheme property* may be invested;
  - (2) the proportion of the *capital property* of the *UCITS scheme* be invested in assets of any description;
  - (3) the descriptions of transactions permitted; and
  - (4) the borrowing powers of the *UCITS scheme*.

**Valuation**

- 5.2.5 R (1) In this chapter, the value of the *scheme property* of a *UCITS scheme* means the net value determined in accordance with *COLL 6.3* (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.
- (2) When valuing the *scheme property* for the purposes of this chapter:
- (a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a *valuation point*, but the valuation and the relevant time do not count as a valuation or a *valuation point* for the purposes of *COLL 6.3* (Valuation and pricing);
  - (b) *initial outlay* is to be regarded as remaining part of the *scheme property*; and
  - (c) if the *authorised fund manager*, having taken reasonable care, determines that the *UCITS scheme* will become entitled to any unrealised profit which has been made on account of a transaction in *derivatives*, that prospective entitlement is to be regarded as part of the *scheme property*.

**Valuation guidance**

- 5.2.6 G It should be noted that for the purpose of *COLL 5.2.5R*, *COLL 6.3* may

be affected by specific provisions in this chapter such as, for example, *COLL* 5.4.6R (Treatment of collateral).

### **Transferable securities**

- 5.2.7 R (1) A *transferable security* is an *investment* which is any of the following:
- (a) a *share*;
  - (b) a *debenture*;
  - (c) a *government and public security*;
  - (d) a *warrant*; or
  - (e) a *certificate representing certain securities*.
- (2) An *investment* is not a *transferable security* if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (3) In applying (2) to an *investment* which is issued by a *body corporate*, and which is a *share* or a *debenture*, the need for any consent on the part of the *body corporate* or any members or *debenture* holders of it may be ignored.
- (4) An *investment* is not a *transferable security* unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the *investment*.

### **UCITS schemes: general**

- 5.2.8 R (1) The *scheme property* of a *UCITS scheme* must, except where otherwise provided in the *rules* in this chapter, consist only of any or all of:
- (a) *transferable securities*;
  - (b) *units* in *collective investment schemes* permitted under *COLL* 5.2.13R (Investment in collective investment schemes);
  - (c) approved money-market instruments permitted under *COLL* 5.2.18R (Investment in money-market instruments);
  - (d) *derivatives* and forward transactions permitted under *COLL* 5.2.20R (Permitted transactions (derivatives and forwards));
- and

- (e) *deposits* permitted under *COLL 5.2.26R* (Investment in deposits).
- (2) For an *ICVC* the *scheme property* may also include movable and immovable property that is necessary for the direct pursuit of the *ICVC's* business.
- (3) *Transferable securities* and money-market instruments held within a *UCITS scheme* must be;
  - (a) admitted to or *dealt* in on an *eligible* market within *COLL 5.2.10R(1)(a)* (Eligible markets: requirements); or
  - (b) *dealt* in on an *eligible* market within *COLL 5.2.10R(1)(b)*; or
  - (c) admitted to or *dealt* in on an *eligible* market within *COLL 5.2.10R(2)*; or
  - (d) for a money-market instrument, within *COLL 5.2.18R(2)*.
- (4) Not more than 10% in value of the *scheme property* of a *UCITS scheme* is to consist of *transferable securities*, which do not fall within (3) or of money-market instruments, which do not fall within *COLL 5.2.18R(2)*.

**Eligible markets regime: purpose**

- 5.2.9 G (1) This section specifies criteria based on those in article 19 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.
- (2) Where a market ceases to be *eligible*, *investments* on that market cease to be *approved securities*. The 10% restriction in *COLL 5.2.8R(4)* applies, and exceeding this limit because a market ceases to be *eligible* will generally be regarded as a breach beyond the control of the *authorised fund manager*.

**Eligible markets: requirements**

- 5.2.10 R (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:
- (a) a *regulated market*;
  - (b) a market in an *EEA State* which is regulated, operates regularly and is open to the public; or
  - (c) any market within (2).

- (2) A market not falling within (1)(a) and (b) is *eligible* for the purposes of the *rules* in this sourcebook if:
  - (a) the *authorised fund manager*, after consultation with and notification to the *depository* (and in the case of an *ICVC*, any other *directors*), decides that market is appropriate for investment of, or *dealing in*, the *scheme property*;
  - (b) the market is included in a list in the *prospectus*; and
  - (c) the *depository* has taken reasonable care to determine that:
    - (i) adequate custody arrangements can be provided for the *investment dealt in* on that market; and
    - (ii) all reasonable steps have been taken by the *authorised fund manager* in deciding whether that market is *eligible*.
- (3) In (2)(a), a market must not be considered appropriate unless it:
  - (a) is regulated;
  - (b) operates regularly;
  - (c) is recognised as a market or exchange or as a self-regulating organisation by an *overseas regulator*;
  - (d) is open to the public;
  - (e) is adequately liquid; and
  - (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

**Spread: general**

- 5.2.11 R (1) This *rule* does not apply to *government and public securities*.
- (2) For the purposes of this *rule* companies included in the same group for the purposes of consolidated accounts as defined in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts or, in the same group in accordance with international accounting standards, are regarded as a single body.
- (3) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (4) Not more than 5% in value of the *scheme property* is to consist of



*transferable securities* or money-market instruments issued by any single body.

- (5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the *scheme property*.
- (6) In applying (4) and (5), *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (7) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 5% in value of the *scheme property*; this limit being raised to 10% where the counterparty is an *approved bank*.
- (8) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and money-market instruments issued by the same group (as referred to in (2)).
- (9) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (10) In applying the limits in (3),(4),(5), (6) and (7), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
  - (a) *transferable securities* or money-market instruments issued by; or
  - (b) *deposits* made with; or
  - (c) exposures from *OTC derivatives* transactions made with; a single body.

**Spread: government and public securities**

- 5.2.12 R (1) This *rule* applies to *government and public securities* (“such *securities*”).
- (2) Where no more than 35% in value of the *scheme property* is invested in such *securities* issued by any one body, there is no limit on the amount which may be invested in such *securities* or in any one issue.
  - (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:

- (a) the *authorised fund manager* has before any such investment is made consulted with the *depository* and as a result considers that the issuer of such *securities* is one which is appropriate in accordance with the investment objectives of the *authorised fund*;
  - (b) no more than 30% in value of the *scheme property* consists of such *securities* of any one issue;
  - (c) the *scheme property* includes such *securities* issued by that or another issuer, of at least six different issues; and
  - (d) the disclosures in (4) have been made.
- (4) Where it is intended that (3) may apply, the *instrument constituting the scheme*, and the most recently published *prospectus*, must prominently state:
- (a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer; and
  - (b) the names of the individual states, the local authorities or public international bodies issuing such *securities* in which the *authorised fund* may invest over 35% of its assets.
- (5) In this *rule* in relation to such *securities*:
- (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
  - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

#### **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 (d):
- (1) the second *scheme* must:
    - (a) satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or

- (b) be recognised under the provisions of section 270 of the *Act* (Schemes authorised in designated countries or territories); or
  - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article 19(1)(e) of the *UCITS Directive* are met); or
  - (d) be authorised in another *EEA State* (provided the requirements of article 19(1)(e) of the *UCITS Directive* are met);
- (2) the second *scheme* must comply, where relevant, with *COLL* 5.2.15R (Investment in associated collective investment schemes) and *COLL* 5.2.16R (Investment in other group schemes); and
  - (3) the second *scheme* must have terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes*.

**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 of the *Act*.
- (2) Article 19 of the *UCITS Directive* sets out the general investment limits. So, a *non-UCITS retail scheme*, or its equivalent *EEA scheme* which has the power to invest in gold or immovables would not meet the criteria set in *COLL* 5.2.13R(1)(c) and (d).

**Investment in associated collective investment schemes**

- 5.2.15 R A *UCITS scheme* must not invest in or dispose of *units* in another *collective investment scheme* (the second *scheme*) if the second *scheme* is managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *UCITS scheme* or an *associate* of that *authorised fund manager*, unless:
- (1) the *prospectus* of the investing *UCITS scheme* clearly states that the property of that investing *scheme* may include such *units*; and
  - (2) *COLL* 5.2.16R (Investment in other group schemes) is complied with.

**Investment in other group schemes**

- 5.2.16 R (1) Where:

- (a) an investment or disposal is made under *COLL* 5.2.15R; and
  - (b) there is a charge in respect of such investment or disposal;
- the *authorised fund manager* of the *UCITS scheme* making the investment or disposal must pay the *UCITS scheme* the amounts referred to in (2) or (3) within four *business days* following the date of the agreement to invest or dispose.
- (2) When an investment is made, the amount referred to in (1)(a) is either:
    - (a) any amount by which the consideration paid by the *UCITS scheme* for the *units* in the second *scheme* exceeds the price that would have been paid for the benefit of the second *scheme* had the *units* been newly issued or sold by it; or
    - (b) if such price cannot be ascertained by the *authorised fund manager* of the *authorised fund*, the maximum amount of any charge permitted to be made by the seller of *units* in the second *scheme*.
  - (3) When a disposal is made, the amount referred to in (1)(a) is any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal.
  - (4) In this *rule*:
    - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with *COLL* 6.3.8R (Dilution) or *SDRT provision* made in accordance with *COLL* 6.3.7 (SDRT provision) is to be treated as part of the *price* of the *units* and not as part of any charge; and
    - (b) any charge made in respect of an exchange of *units* in one *sub-fund* or separate part of the second *scheme* for *units* in another *sub-fund* or separate part of that *scheme* is to be included as part of the consideration paid for the *units*.

**Investment in warrants and nil and partly paid securities**

- 5.2.17 R (1) Where a *UCITS scheme* invests in a *warrant*, the exposure created by the exercise of the right conferred by that *warrant* must not exceed the limits in *COLL* 5.2.11R (Spread: general) and *COLL* 5.2.12R (Spread: government and public securities).
- (2) A *transferable security* or a money-market instrument on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the *UCITS scheme*, at the time when payment is required, without contravening the *rules* in this chapter.

**Investment in money-market instruments**

- 5.2.18 R A *UCITS scheme* may invest in money-market instruments which are normally dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided the money-market instrument is:
- (1) within *COLL* 5.2.8R(3)(UCITS schemes: general); or
- (2) a money-market instrument issued or guaranteed by:
- (a) a central, regional or local authority or central bank of an *EEA State*, the European Central Bank, the European Union or the European Investment Bank, a non-*EEA State* or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more *EEA States* belong; or
- (b) an establishment subject to prudential supervision in accordance with criteria defined by Community law or an establishment which is subject to and complies with prudential rules considered by the *FSA* to be at least as stringent as those laid down by Community law; or
- (3) issued by a body, any *securities* of which are *dealt* in on an *eligible* market.

**Derivatives: general**

- 5.2.19 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *UCITS scheme* unless:

- (a) the transaction is of a kind specified in *COLL 5.2.20R* (Permitted transactions (derivatives and forwards)); and
  - (b) the transaction is covered, as required by *COLL 5.3.3R* (Cover for transactions in derivatives and forward transactions).
- (2) Where a *UCITS scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in *COLL 5.2.11R* (Spread: general) and *COLL 5.2.12R* (Spread: government and public securities) save as provided in (4).
  - (3) Where a *transferable security* or money-market instrument embeds a *derivative*, this must be taken into account for the purposes of complying with this section.
  - (4) Where a *scheme* invests in an index based *derivative*, provided the relevant index falls within *COLL 5.2.33R* (Relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of *COLL 5.2.11R* and *COLL 5.2.12R*.
  - (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of *COLL 5.2.3R* (Prudent spread of risk).

**Permitted transactions (derivatives and forwards)**

- 5.2.20 R (1) A transaction in a *derivative* must:
- (a) be in an *approved derivative*; or
  - (b) be one which complies with *COLL 5.2.23R* (OTC transactions in derivatives).
- (2) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *scheme* is *dedicated*:
- (a) *transferable securities*;
  - (b) money-market instruments permitted under *COLL 5.2.18R* (Investment in money-market instruments);
  - (c) *deposits* permitted under *COLL 5.2.26R* (Investment in deposits);
  - (d) *derivatives* permitted under this *rule*;
  - (e) *collective investment scheme units* permitted under *COLL 5.2.13R* (Investment in collective investment

- schemes);
  - (f) financial indices;
  - (g) interest rates;
  - (h) foreign exchange rates; and
  - (i) currencies.
- (3) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.
  - (4) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the scheme* and the most recently published *prospectus*.
  - (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more *transferable securities*, money-market instruments, *units* in *collective investment schemes* or *derivatives*.
  - (6) Any forward transaction must be made with an *eligible institution* or an *approved bank*.

#### **Transactions for the purchase of property**

- 5.2.21 R A *derivative* or forward transaction which will or could lead to the delivery of property for the account of the *UCITS scheme* may be entered into only if:
- (1) that property can be held for the account of the *UCITS scheme*;
  - and
  - (2) the *authorised fund manager* having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the *rules* in this sourcebook.

#### **Requirement to cover sales**

- 5.2.22 R (1) No agreement by or on behalf of a *UCITS scheme* to dispose of property or rights may be made unless:

- (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the *UCITS scheme* by delivery of property or the assignment (or, in Scotland, assignation) of rights; and
  - (b) the property and rights at (a) are owned by the *UCITS scheme* at the time of the agreement.
- (2) Paragraph (1) does not apply to a *deposit*.

**OTC transactions in derivatives**

5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* must be:

- (1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
  - (a) an *eligible institution* or an *approved bank*; or
  - (b) a *person* whose *permission* (including any *requirements* or *limitations*), as published in the *FSA Register*, or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;
- (2) on approved terms; the terms of the transaction in *derivatives* are approved only if, before the transaction is entered into, the *depository* is satisfied that the counterparty has agreed with the *ICVC* or the *authorised fund manager*:
  - (a) to provide a reliable and verifiable valuation in respect of that transaction at least daily and at any other time at the request of the *ICVC* or *authorised fund manager*; and
  - (b) that it will, at the request of the *ICVC* or *authorised fund manager*, enter into a further transaction to *close out* that transaction at any time, at a fair value arrived at under the pricing model or other reliable basis agreed under (3); and
- (3) capable of valuation; a transaction in *derivatives* is capable of valuation only if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:



- (a) on the basis of the pricing model which has been agreed between the *authorised fund manager* and the *depository*; or
- (b) on some other reliable basis reflecting an up-to-date market value which has been so agreed.

**Risk management: derivatives**

- 5.2.24 R (1) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* and forwards positions and their contribution to the overall risk profile of the *scheme*.
- (2) The following details of the risk management process must be notified by the *authorised fund manager* to the *FSA* in advance of the use of the process as required by (1):
- (a) the methods for estimating risks in *derivative* and forward transactions; and
  - (b) the types of *derivatives* and forwards to be used within the *scheme* together with their underlying risks and any relevant quantitative limits.
- (3) The *authorised fund manager* must notify the *FSA* in advance of any material alteration to the details in (2)(a) or (b).

**Risk management process**

- 5.2.25 G (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL* 6.6.14R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.

- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 3.1 (Systems and controls).
- (5) The risk management process should enable the analysis required by COLL 5.2.24R to be undertaken at least daily or at each *valuation point* whichever is the more frequent.

#### **Investment in deposits**

5.2.26 R A *UCITS scheme* may invest in *deposits* only if it:

- (1) is with an *approved bank*;
- (2) is:
  - (a) repayable on demand; or
  - (b) has the right to be withdrawn; and
- (3) matures in no more than 12 *months*.

#### **Significant influence for ICVCs**

- 5.2.27 R (1) An *ICVC* must not acquire *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that *body corporate* if:
- (a) immediately before the acquisition, the aggregate of any such *securities* held by the *ICVC* gives the *ICVC* power to influence significantly the conduct of business of that *body corporate*; or
  - (b) the acquisition gives the *ICVC* that power.

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

**Significant influence for managers of AUTs**

- 5.2.28 R (1) A *manager* must not acquire, or cause to be acquired for an *AUT* of which it is the *manager*, *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the *body corporate* if:
- (a) immediately before the acquisition, the aggregate of any such *securities* held for that *AUT*, taken together with any such *securities* already held for other *AUTs* of which it is also the *manager*, gives the *manager* power significantly to influence the conduct of business of that *body corporate*; or
  - (b) the acquisition gives the *manager* that power.
- (2) For the purpose of (1), a *manager* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held for all the *AUTs* of which it is the *manager*, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

**Concentration**

- 5.2.29 R A *UCITS scheme*:
- (1) must not acquire *transferable securities* (other than *debt securities*) which:
    - (a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and

- (b) represent more than 10% of those *securities* issued by that *body corporate*;
- (2) must not acquire more than 10% of the *debt securities* issued by any single body;
- (3) must not acquire more than 25% of the *units* in a *collective investment scheme*;
- (4) must not acquire more than 10% of the money-market instruments issued by any single body; and
- (5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

#### **UCITS schemes that are umbrellas**

- 5.2.30 R (1) In relation to a *UCITS scheme* which is an *umbrella*, the provisions in *COLL 5.2* to *COLL 5.5* apply to each *sub-fund* as they would for an *authorised fund*, except the following *rules* which apply at the level of the *umbrella* only:
- (a) *COLL 5.2.27R* (Significant influence for ICVCs);
  - (b) *COLL 5.2.28R* (Significant influence for managers of AUTs); and
  - (c) *COLL 5.2.29R* (Concentration).
- (2) A *sub-fund* must not invest in another *sub-fund* of the same *umbrella*.

#### **Schemes replicating an index**

- 5.2.31 R (1) A *UCITS scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *scheme* as stated in the most recently published *prospectus* is to replicate the composition of a relevant index which satisfies the criteria specified in *COLL 5.2.33R* (Relevant indices).
- (2) The limit in (1) can be raised for a particular *UCITS scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

#### **Index replication**

- 5.2.32 G In the case of a *UCITS scheme* replicating an index under *COLL 5.2.31R* (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index where deviation from this is expedient for reasons of poor liquidity or excessive cost to the *scheme* in trading in an underlying *investment*.

**Relevant indices**

- 5.2.33 R The indices referred to in *COLL 5.2.31R* are those which satisfy the following criteria:
- (1) the composition is sufficiently diversified;
  - (2) the index is a representative benchmark for the market to which it refers; and
  - (3) the index is published in an appropriate manner.

## **Derivative exposure**

### **Application**

- 5.3.1 R This section applies to an *authorised fund manager* of a *UCITS scheme* and to an *ICVC* which is a *UCITS scheme*.

### **Introduction**

- 5.3.2 G (1) A *scheme* may invest in *derivatives* and forward transactions as long as the exposure to which the *scheme* is committed by that transaction itself is suitably covered from within its *scheme property*. Exposure will include any *initial outlay* in respect of that transaction.
- (2) Cover ensures that a *scheme* is not exposed to the risk of loss of property, including *money*, to an extent greater than the net value of the *scheme property*. Therefore, a *scheme* is required to hold *scheme property* sufficient in value or amount to match the exposure arising from a *derivative* obligation to which the *scheme* is committed. *COLL 5.3.3R* (Cover for transactions in derivatives and forward transactions) sets out detailed requirements for cover of a *scheme*.
- (3) In accordance with *COLL 5.1.3R(2)(b)* (Treatment of obligations), cover used in respect of one transaction in *derivatives* or forward transaction should not be used for cover in respect of another transaction in *derivatives* or a forward transaction.

### **Cover for transactions in derivatives and forward transactions**

- 5.3.3 R (1) A transaction in *derivatives* or forward transaction may be entered into only if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under (2).
- (2) Exposure is covered globally if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement,

counterparty risk, and the time available to liquidate any positions.

- (3) Cash not yet received into the *scheme property* but due to be received within one *month* is available as cover for the purposes of (2).
- (4) Property the subject of a transaction under *COLL 5.4* (Stock lending) is only available for cover if the *authorised fund manager* has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.
- (5) The total exposure relating to *derivatives* held in a *UCITS scheme* may not exceed the net value of the *scheme property*.

#### **Guidance on cover**

- 5.3.4 G An *authorised fund manager* should note that the scope of *COLL 5.3.3R* is extended in relation to underwriting commitments by *COLL 5.5.8R(4)* (General power to accept or underwrite placings).

#### **Borrowing**

- 5.3.5 R (1) Cash obtained from borrowing, and borrowing which the *authorised fund manager* reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, is not available for cover under *COLL 5.3.3R* (Cover for transactions in derivatives and forward transactions), except if (2) applies.
- (2) Where, for the purposes of this section, the *ICVC* or the *trustee* for the account of the *AUT* on the instructions of the *manager*:
- (a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and
  - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on *deposit* with the lender (or his agent or nominee);
- then this section applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*.

#### **Continuing nature of limits and requirements**

- 5.3.6 R (1) An *authorised fund manager* must, (as frequently as necessary), re-calculate the amount of cover required in respect of *derivatives* and forward positions already in existence under this section.
- (2) *Derivatives* and rights under forward transactions may be retained in the *scheme property* only so long as they remain covered globally under *COLL 5.3.3R*.



## 5.4 Stock lending

### Application

- 5.4.1 R (1) This section applies to a *depository* of an *authorised fund* which is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (2) *COLL 5.4.3R* (Stock lending: general) also applies to:
- (a) an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*; and
  - (b) a *manager* of an *AUT* which is a *UCITS scheme* or a *non-UCITS retail scheme*.
- (3) *COLL 5.4.4R* (Stock lending: requirements) also applies to an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme*.

### Permitted stock lending

- 5.4.2 G (1) This section permits the generation of additional income for the benefit of the *authorised fund*, and hence for its investors, by entry into *stock lending* transactions for the account of the *authorised fund*.
- (2) The specific method of *stock lending* permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower otherwise than by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

### Stock lending: general

- 5.4.3 R The *stock lending* permitted by this section may be exercised by an *authorised fund* when it reasonably appears to the *ICVC* or to the *manager* to be appropriate to do so with a view to generating additional income for the *authorised fund* with an acceptable degree of risk.

**Stock lending: requirements**

- 5.4.4 R (1) An *ICVC*, or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, may enter into a *stock lending* arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:
- (a) all the terms of the agreement under which *securities* are to be reacquired by the *depository* for the account of the *ICVC* or by the *trustee*, are in a form which is acceptable to the *depository* or to the *trustee* and are in accordance with good market practice;
  - (b) the counterparty is an *authorised person* or a *person* authorised by a *Home State regulator*; and
  - (c) *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the *collateral* is:
    - (i) acceptable to the *depository*;
    - (ii) adequate within *COLL 5.4.6R(1)*; and
    - (iii) sufficiently immediate within *COLL 5.4.6R(2)*.
- (2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement referred to in (1)(a) to transfer to the *depository* the *securities* transferred by the *depository* under the *stock lending* arrangement or *securities* of the same kind.

**Stock lending: treatment of collateral**

- 5.4.5 G Where a *stock lending* arrangement is entered into, the *scheme property* remains unchanged in terms of value. The *securities* transferred cease to be part of the *scheme property*, but there is

obtained in return an obligation on the part of the counterparty to transfer back equivalent *securities*. The *depository* will also receive *collateral* to set against the risk of default in transfer, and that *collateral* is equally irrelevant to the valuation of the *scheme property* (because it is transferred against an obligation of equivalent value by way of re-transfer). *COLL 5.4.6R* accordingly makes provision for the treatment of the *collateral* in that context.

#### **Treatment of collateral**

- 5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:
- (a) transferred to the *depository* or its agent;
  - (b) at least equal in value, at the time of the transfer to the *depository*, to the value of the *securities* transferred by the *depository*; and
  - (c) in the form of one or more of:
    - (i) cash; or
    - (ii) *government and public securities*; or
    - (iii) a certificate of *deposit*; or
    - (iv) a letter of *credit*; or
    - (v) a *readily realisable security*.
- (2) *Collateral* is sufficiently immediate for the purposes of this section if:
- (a) it is transferred before or at the time of the transfer of the *securities* by the *depository*; or
  - (b) the *depository* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (3) The *depository* must ensure that the value of the *collateral* at all times is at least equal to the value of the *securities* transferred by the *depository*.
- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire or has expired where the *depository* takes reasonable care to

determine that sufficient *collateral* will again be transferred at the latest by the close of business on the *day* of expiry.

- (5) Any agreement for transfer at a future date of *securities* or of *collateral* (or of the equivalent of either) under this section may be regarded, for the purposes of valuation under *COLL* 6.3 (Valuation and pricing) or this chapter, as an unconditional agreement for the *sale* or transfer of property, whether or not the property is part of the property of the *authorised fund*.
- (6) *Collateral* transferred to the *depository* is part of the *scheme property* for the purposes of the *rules* in this sourcebook, except in the following respects:
  - (a) it does not fall to be included in any valuation for the purposes of *COLL* 6.3 or this chapter, because it is offset under (5) by an obligation to transfer; and
  - (b) it does not count as *scheme property* for any purpose of this chapter other than this section.
- (7) Paragraph (5) and (6)(a) do not apply to any valuation of *collateral* itself for the purposes of this section.

**Limitation by value**

- 5.4.7 R There is no limit on the value of the *scheme property* which may be the subject of *stock lending* transactions within this section.

## 5.5 Cash, borrowing, lending and other provisions

### Application

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

### Table of application

- 5.5.2 R This table belongs to *COLL 5.5.1R*.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Manager of an AUT</i>	<i>Depository of an ICVC</i>	<i>Trustee of an AUT</i>
5.5.3R		x	x		
5.5.4R(1) to (3)	x				x
5.5.4R(4)&(5)		x	x		
5.5.4R(6)				x	x
5.5.4R(7)	x	x	x	x	x
5.5.4R(8)	x				
5.5.5R(1) to (3)		x	x		
5.5.5R(4)	x	x			
5.5.6R(1)&(2)	x		x		x
5.5.6R(3)	x				
5.5.7R(1)-(3)	x		x		x
5.5.7R(4)	x			x	x
5.5.8R	x	x	x		
5.5.9R	x			x	x
5.5.10G	x	x	x	x	x
Note: x means "applies"					

### Cash and near cash

- 5.5.3 R (1) Cash and *near cash* must not be retained in the *scheme property* except to the extent that this may reasonably be regarded as necessary in order to enable:
- (a) the pursuit of the *scheme's* investment objectives; or
  - (b) *redemption* of *units*; or
  - (c) efficient management of the *authorised fund* in accordance with its investment objectives; or

- (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the *authorised fund*.
- (2) During the period of the *initial offer* the *scheme property* may consist of cash and *near cash* without limitation.

**General power to borrow**

- 5.5.4 R (1) The *ICVC* or *trustee* (on the instructions of the *manager*) may, in accordance with this *rule* and *COLL 5.5.5R* (Borrowing limits), borrow *money* for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) Paragraph (1) is subject to the obligation of the *authorised fund* to comply with any restriction in the *instrument constituting the scheme*.
  - (3) The *ICVC* or *trustee* may borrow under (1) only from an *eligible institution* or an *approved bank*.
  - (4) The *authorised fund manager* must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the *authorised fund manager* must have regard in particular to:
    - (a) the duration of any period of borrowing; and
    - (b) the number of occasions on which resort is had to borrowing in any period.
  - (5) In addition to complying with (4), the *authorised fund manager* must ensure that no period of borrowing exceeds three *months*, whether in respect of any specific sum or at all, without the prior consent of the *depository*.
  - (6) The *depository* may only give its consent as required under (5) on such conditions as appear to the *depository* appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
  - (7) This *rule* does not apply to "back to back" borrowing under

*COLL 5.3.5R(2)* (Borrowing).

- (8) An *ICVC* must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with (1) to (6)

**Borrowing limits**

- 5.5.5 R (1) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 10% of the value of the *scheme property*.
- (2) This *rule* does not apply to "back to back" borrowing under *COLL 5.3.5R(2)*(Borrowing).
- (3) In this *rule*, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of *money* into the *scheme property* in the expectation that the sum will be repaid.
- (4) For an *ICVC*, borrowing does not include any arrangement for the *ICVC* to pay to a third party (including the *ACD*) any costs which the *ICVC* is entitled to amortise under the *rules* in this sourcebook and which were paid on behalf of the *ICVC* by the third party.

**Restrictions on lending of money**

- 5.5.6 R (1) None of the *money* in the *scheme property* of an *authorised fund* may be lent and, for the purposes of this prohibition, *money* is lent by an *authorised fund* if it is paid to a *person* ("the payee") on the basis that it should be repaid, whether or not by the payee.
- (2) Acquiring a *debenture* is not lending for the purposes of (1); nor is the placing of *money* on deposit or in a current account.
- (3) Paragraph (1) does not prevent an *ICVC* from providing an *officer* of the *ICVC* with funds to meet expenditure to be incurred by him for the purposes of the *ICVC* (or for the purposes of enabling him properly to perform his duties as an *officer* of the *ICVC*) or from doing anything to enable an *officer* to avoid incurring such expenditure.

### **Restrictions on lending of property other than money**

- 5.5.7 R (1) The *scheme property* of an *authorised fund* other than *money* must not be lent by way of deposit or otherwise.
- (2) Transactions permitted by *COLL 5.4* (Stock lending) are not to be regarded as lending for the purposes of (1).
- (3) The *scheme property* must not be mortgaged.
- (4) Nothing in this *rule* prevents the *ICVC* or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, from lending, depositing, pledging or charging *scheme property* for *margin* requirements where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any other of the *rules* in this chapter.

### **General power to accept or underwrite placings**

- 5.5.8 R (1) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* applies, subject to compliance with any restriction in the *instrument constituting the scheme*.
- (2) This *rule* applies to any agreement or understanding which:
- (a) is an underwriting or sub-underwriting agreement; or
  - (b) contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *authorised fund*.
- (3) Paragraph (2) does not apply to:
- (a) an *option*; or
  - (b) a purchase of a *transferable security* which confers a right to:
    - (i) subscribe for or acquire a *transferable security*; or
    - (ii) convert one *transferable security* into another.
- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:
- (a) covered under *COLL 5.3.3R* (Cover for transactions in derivatives and forward transactions); and



- (b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

**Guarantees and indemnities**

- 5.5.9 R (1) An *ICVC* or a *depository* for the account of an *authorised fund* must not provide any guarantee or indemnity in respect of the obligation of any *person*.
- (2) None of the *scheme property* of an *authorised fund* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.
- (3) Paragraphs (1) and (2) do not apply to:
- (a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter; and
  - (b) for an *ICVC*:
    - (i) an indemnity falling within the provisions of regulation 62(3) of the *OEIC Regulations* (Exemptions from liability to be void);
    - (ii) an indemnity (other than any provision in it which is void under regulation 62 of the *OEIC Regulations*) given to the *depository* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and
    - (iii) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *ICVC* and the *holders* of *units* in that *scheme* become the first *unitholders* in the *ICVC*; and
  - (c) for an *AUT*, an indemnity given to a *person* winding up a body corporate or other *scheme* in circumstances where

those assets are becoming part of the *scheme property* by way of a *unitisation*.

**Guidance on restricting payments**

- 5.5.10 G *COLL* 6.7.15R (Payment of liabilities on transfer of assets) and *COLL* 6.7.4R (Payments out of scheme property) contain provisions restricting payments out of *scheme property*.

## 5.6 Investment powers and borrowing limits for non – UCITS retail schemes

### Application

- 5.6.1 R (1) This section applies to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* and to an *ICVC* which is a *non-UCITS retail scheme*.
- (2) Where this section contains a reference to a *rule* in any of *COLL 5.1* to *COLL 5.5*, these *rules* and any *rules* to which they refer or any relevant *guidance* should be read as if any reference to a *UCITS scheme* is to a *non-UCITS retail scheme*.

### Explanation of COLL 5.6

- 5.6.2 G (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements of the *UCITS Directive*. Consequently, a *scheme* authorised as a *non-UCITS retail scheme* will not qualify for the cross border passporting rights conferred by the *UCITS Directive* on a *UCITS scheme*.
- (2) Some examples of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* are the power to:
- (a) invest not more than 10% of the value of *scheme property* in *transferable securities* or money-market instruments issued by any single body;
  - (b) invest in up to 20% in aggregate of the value of the *scheme property* in *transferable securities* which are not *approved securities* and unregulated *schemes*;
  - (c) invest in a wider range of *schemes* which do not comply with the requirements of the *UCITS Directive*;
  - (d) include gold in the *scheme property* (up to a limit of 10% of the value of the *scheme property*);
  - (e) include immovables in the *scheme property*; and

- (f) borrow on a non-temporary basis without any specific time limit as to repayment of the borrowing.

**Prudent spread of risk**

- 5.6.3 R (1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recently published *prospectus*, the *scheme property* of the *non-UCITS retail scheme* aims to provide a prudent spread of risk
- (2) The *rules* in this section relating to spread of investments do not apply during any period in which it is not reasonably practical to comply, provided that (1) is complied with during such period.

**Investment powers: general**

- 5.6.4 R (1) The *scheme property* of a *non-UCITS retail scheme* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
- (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC's* business of investing in those assets or investments.
- (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that *non-UCITS retail scheme* and within any upper limit specified in this section.
- (4) The *instrument constituting the scheme* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
- (a) *transferable securities*;
  - (b) money-market instruments;

- (c) *units in collective investment schemes* permitted under *COLL 5.6.10R* (Investment in collective investment schemes);
- (d) *derivatives* and forward transactions permitted under *COLL 5.6.13R* (Permitted transactions (derivatives and forwards));
- (e) *deposits* permitted under *COLL 5.2.26R* (Investment in deposits);
- (f) immovables permitted under *COLL 5.6.18R* (Investment in property) and *COLL 5.6.19R* (Investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the *scheme property*.

**Transferable securities and money-market instruments**

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

- (1) be admitted to or *dealt* in on an *eligible* market within *COLL 5.2.10R*(Eligible markets: requirements); and
- (2) subject to a limit of 20% in value of the *scheme property* be:
  - (a) *transferable securities* which are not *approved securities*;
  - or
  - (b) money-market instruments which are liquid and have a value which can be determined accurately at any time.

**Valuation**

5.6.6 R In this section the value of the *scheme property* means the value of the *scheme property* determined in accordance with *COLL 5.2.5R* (Valuation).

**Spread: general**

- 5.6.7 R (1) This *rule* does not apply in respect of *government and public securities*.
- (2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.

- (3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or money-market instruments issued by any single body subject to *COLL 5.6.23R* (Schemes replicating an index).
- (4) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (5) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
- (6) Except for a *feeder fund*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

**Spread: government and public securities**

- 5.6.8 R (1) This *rule* applies in respect of *government and public securities*.
- (2) The requirements in *COLL 5.2.12R* (Spread: government and public securities) apply to investment in *government and public securities* by a *non-UCITS retail scheme*.

**Investment in warrants and nil and partly paid securities**

- 5.6.9 R A *non-UCITS retail scheme* must not invest in *warrants*, and nil and partly paid *securities* unless the investment complies with the conditions in *COLL 5.2.17R* (Investment in warrants and nil and partly paid securities).

**Investment in collective investment schemes**

- 5.6.10 R A *non-UCITS retail scheme* must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (4):
- (1) the second *scheme*:
    - (a) satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
    - (b) is a *non-UCITS retail scheme*; or
    - (c) is a *recognised scheme*; or
    - (d) is constituted outside the *United Kingdom* and the investment and borrowing powers of which are the same or more restrictive than those of a *non-UCITS retail scheme*; or

- (e) is a *scheme* not falling within (a) to (d) and in respect of which no more than 20% in value of the *scheme property* (including any *transferable securities* which are not *approved securities*) is invested;
- (2) the second *scheme* operates on the principle of the prudent spread of risk;
- (3) the second *scheme* is prohibited from having more than 15% in value of the property of that *scheme* consisting of *units* in *collective investment schemes*; and
- (4) the *participants* in the second *scheme* must be entitled to have their *units* redeemed in accordance with the *scheme* at a *price*:
  - (a) related to the net value of the property to which the *units* relate; and
  - (b) determined in accordance with the *scheme*.

**Investment in associated collective investment schemes**

- 5.6.11 R *Units* in a *scheme* do not fall within COLL 5.6.10R if that *scheme* is managed or operated by (or, if it is an *ICVC*, has as its *ACD*) the *authorised fund manager* of the investing *non-UCITS retail scheme* or by an *associate* of that *authorised fund manager*, unless:
- (1) the *prospectus* of the investing *authorised fund* clearly states that the property of that investing fund may include such *units*; and
  - (2) the conditions in COLL 5.2.16R (Investment in other group schemes) are complied with.

**Derivatives: general**

- 5.6.12 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *non-UCITS retail scheme* unless the transaction is:
- (a) of a kind specified in COLL 5.2.20R (Permitted transactions (derivatives and forwards)); and
  - (b) covered, as required by COLL 5.3.3R (Cover for transactions in derivatives and forward transactions).

- (2) Where a *scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in *COLL 5.6.7R* (Spread: general) and *COLL 5.6.8R* (Spread: government and public securities) except as provided in (4).
- (3) Where a *transferable security* or money-market instrument embeds a *derivative*, this must be taken into account for the purposes of calculating any limit in this section.
- (4) Where a *scheme* invests in an index-based *derivative*, provided the relevant index falls within *COLL 5.6.23R* (Schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of *COLL 5.6.7R* and *COLL 5.6.8R*.
- (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of *COLL 5.6.3R* (Prudent spread of risk).

**Permitted transactions (derivatives and forwards)**

- 5.6.13 R (1) A transaction in a *derivative* must be within *COLL 5.2.20R(1)* (Permitted transactions (derivatives and forwards)) and:
- (a) the underlying must be within *COLL 5.2.20R(2)* or *COLL 5.6.4R(5)* (Investment powers: general); and
  - (b) the exposure to the underlying must not exceed the limits in *COLL 5.6.7R* (Spread: general) and *COLL 5.6.8R* (Spread: government and public securities).
- (2) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.
  - (3) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the scheme* and the most recently published *prospectus*.
  - (4) A transaction in a *derivative* must not be effected if the intended effect is to create the potential for an uncovered sale of:
    - (a) *transferable securities*;
    - (b) money-market instruments;



- (c) *units in collective investment schemes*; or
  - (d) *derivatives*.
- (5) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (6) The *authorised fund manager* must ensure compliance with *COLL 5.3.6R* (Continuing nature of limits and requirements).

**Transactions for the purchase or disposal of property**

- 5.6.14 R The requirements of *COLL 5.2.21R* (Transactions for the purchase of property) and *COLL 5.2.22R* (Requirement to cover sales) apply to *non-UCITS retail schemes* in the same manner as to *UCITS schemes*.

**OTC transactions in derivatives**

- 5.6.15 R Any transaction in an *OTC derivative* under *COLL 5.6.13R* (Permitted transactions (derivatives and forwards)) must comply with the requirements of *COLL 5.2.23R* (OTC transactions in derivatives).

**Risk management: derivatives and forwards**

- 5.6.16 R An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated with a *non-UCITS retail scheme's derivatives* and forwards positions and their contribution to the overall risk profile of the *scheme*.

**Risk management process**

- 5.6.17 G (1) The risk management process should take account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recent *prospectus*.
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL 6.6* (Powers and duties of the scheme, the authorised fund manager and the depository), as appropriate.

- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *non-UCITS retail scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 3.1 (Systems and controls).
- (5) The risk management process should enable the analysis required by COLL 5.6.16R (Risk management: derivatives and forwards) to be undertaken at least daily or at each *valuation point* whichever is the more frequent.

#### **Investment in property**

- 5.6.18 R (1) Any investment in land or a building held within the *scheme property* of a *non-UCITS retail scheme* must be an immovable within (2) to (5).
- (2) An immovable must:
    - (a) be situated in a country or territory identified in the *prospectus* for the purpose of this *rule*; and
    - (b) if situated in:
      - (i) England and Wales or Northern Ireland, be a freehold or leasehold interest; or
      - (ii) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
    - (c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii).
  - (3) The *authorised fund manager* must have taken reasonable care to determine that the title to the immovable is a good marketable title.
  - (4) The *manager* or the *ICVC* must:
    - (a) have received a report from an *appropriate valuer* which:

- (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
    - (ii) states that in the *appropriate valuer's* opinion the immovable would, if acquired by the *scheme*, be capable of being disposed of reasonably quickly at that valuation; or
  - (b) have received a report from an *appropriate valuer* as required by (4)(a)(i) and stating that:
    - (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property* or is another legal interest as defined in (2)(b) or (c) in an immovable which is already included in the *scheme property*; and
    - (ii) in the opinion of the *appropriate valuer*, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.
- (5) An immovable must:
- (a) be bought or be agreed by enforceable contract to be bought within six *months* after receipt of the report of the *appropriate valuer* under (4);
  - (b) not be bought, if it is apparent to the *authorised fund manager* that the report in (a) could no longer reasonably be relied upon; and
  - (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in (4).
- (6) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- (7) An *appropriate valuer* must be a *person* who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - (b) is qualified to be a *standing independent valuer* of a *non-UCITS retail scheme* or is considered by the *scheme's*

*standing independent valuer* to hold an equivalent qualification;

- (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *manager* and *trustee* of the *AUT*; and
- (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

#### **Investment limits for immovables**

- 5.6.19 R The following limits apply in respect of immovables held as part of *scheme property* of a *scheme*:
- (1) not more than 15% in value of the *scheme property* is to consist of any one immovable;
  - (2) in (1), immovables within *COLL* 5.6.18R (4)(b)(Investment in property) must be regarded as one immovable;
  - (3) the figure of 15% in (1) may be increased to 25% once the immovable has been included in the *scheme property* in compliance with (1);
  - (4) the income receivable from any one *group* in any accounting period must not be attributable to immovables comprising:
    - (a) more than 25%; or
    - (b) in the case of a government or public body more than 35%;of the value of the *scheme property*;
  - (5) not more than 20% in value of the *scheme property* is to consist of mortgaged immovables and any mortgage must not secure more than 100% of the value in *COLL* 5.6.18R(4) (on the assumption the immovable is not mortgaged);
  - (6) an immovable may be mortgaged up to 100% of the value in (4) provided that no more than 20% of the value of the *scheme property* consists of such immovables and any *transferable securities* which are not *approved securities*;
  - (7) not more than 50% in value of the *scheme property* is to

consist of *immovables* which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and

- (8) no option may be granted to a third party to buy any immovable comprised in the *scheme property* unless the value of the relevant immovable does not exceed 20% of the value of the *scheme property* together with, where appropriate, the value of investments in:
  - (a) *unregulated collective investment schemes*; and
  - (b) any *transferable securities* which are not *approved securities*.

### **Standing independent valuer and valuation**

- 5.6.20 R (1) The following requirements apply in relation to the appointment of a valuer:
- (a) the *authorised fund manager* must ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*; and
  - (b) the appointment must be made with the approval of the *trustee* or *depository* at the outset and upon any vacancy.
- (2) The *standing independent valuer* in (1) must be:
- (a) for an *AUT*, independent of the *manager* and *trustee*; and
  - (b) for an *ICVC*, independent of the *ICVC*, the *directors* and the *depository*.
- (3) The following requirements apply in relation to the functions of the *standing independent valuer*:
- (a) the *authorised fund manager* must ensure that the *standing independent valuer* values all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
  - (b) for the purposes of (a) any inspection in relation to

- adjacent properties of a similar nature may be limited to that of only one such representative property;
- (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
  - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matters that appear likely to:
    - (i) affect the outcome of a valuation of an immovable;
    - or
    - (ii) cause the valuer to decide to value under (a) instead of under (c);it must immediately inform the *standing independent valuer* of that matter;
  - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
  - (f) any valuation by the *standing independent valuer* must be on the basis of an 'Open Market value' as defined in Practice Statement 3 in the Royal Institute of Chartered Surveyors' Appraisal and Valuation Manual (first edition published September 1995) but subject to *COLL* 6.3 (Valuation and pricing).
- (4) In relation to an immovable:
- (a) any valuation under *COLL* 6.3 (Valuation and pricing) has effect, until the next valuation under that *rule*, for the purposes of the value of immovables; and
  - (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally

enforceable.

**Stock lending**

- 5.6.21 R A *non-UCITS retail scheme* may undertake *stock lending* in accordance with *COLL 5.4* (Stock lending).

**Cash, borrowing, lending and other provisions**

- 5.6.22 R The following *rules* in Chapter 5 apply to a *non-UCITS retail scheme*:

- (1) *COLL 5.2.7R* (Transferable securities);
- (2) *COLL 5.5.1R*(Application);
- (3) *COLL 5.5.3R* (Cash and near cash);
- (4) *COLL 5.5.4R*(1),(2),(3) and (8) (General power to borrow);
- (5) *COLL 5.5.5R* (1),(2) and (4) (Borrowing limits);
- (6) *COLL 5.5.6R* (Restrictions on lending of money) ;
- (7) *COLL 5.5.7R*(1)and (2)(Restrictions on lending of property other than money);
- (8) *COLL 5.5.8R* (General power to accept or underwrite placings); and
- (9) *COLL 5.5.9R* (Guarantees and indemnities).

**Schemes replicating an index**

- 5.6.23 R (1) A *non-UCITS retail scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the aim of the investment policy of that *scheme* as stated in its most recently published *prospectus* is to replicate the performance or composition of an index within (2).
- (2) The index must:
- (a) have a sufficiently diversified composition;
  - (b) be a representative benchmark for the market to which it refers; and
  - (c) be published in an appropriate manner.

- (3) The limit in (1) may be raised for a particular *scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

**Non-UCITS retail schemes that are umbrellas**

- 5.6.24 R (1) In relation to a *scheme* which is an *umbrella*, the provisions in this section apply to each *sub-fund* as they would for a *non-UCITS retail scheme*.
- (2) A *sub-fund* must not invest in another *sub-fund* of the same *umbrella*.



## 6 Operating duties and responsibilities

### 6.1 Introduction and Application

#### Application

6.1.1 R This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

#### Purpose

6.1.2 G This chapter helps in achieving the *regulatory objective* of protecting *consumers*. It provides the operating framework within which the *authorised fund* must be operated on a day-to-day basis to ensure that *clients* are treated fairly when they become, remain or as they cease to be *unitholders*.

#### Explanation of this chapter

- 6.1.3 G (1) The *authorised fund manager* operates the *scheme* on a day-to-day basis. Its operation is determined by the *rules* in this chapter, which require appropriate powers in the *instrument constituting the scheme* or refer to the need to state the relevant operating procedures in the *prospectus* of the *scheme*.
- (2) The *authorised fund manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*. The *rules* in this chapter set out the parameters of such delegation.
- (3) The *depository's* duty is, generally speaking, to ensure the safe custody of *scheme property* and to oversee certain functions of the *authorised fund manager* (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a *trustee* of an *AUT* are similar to, but not the same as, the oversight responsibilities of the *depository* of an *ICVC*. These differences result from the different legal structure of the *authorised funds* and the *trustee's* obligations under trust law.

## 6.2 Dealing

### Application

- 6.2.1 R This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *directors* of an *ICVC*.

### Purpose

- 6.2.2 G (1) This section helps in achieving the *regulatory objective* of securing an appropriate degree of protection for *consumers*. In accordance with *Principle 6*, this section is also concerned with ensuring the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* is responsible for arranging for the *issue* and the *cancellation* of *units* for the *authorised fund*, and is permitted to *sell* and *redeem units* for its own account. The *rules* in this section are intended to ensure that the *authorised fund manager* treats the *authorised fund* fairly when arranging for the *issue* or *cancellation* of *units*, and treats *clients* fairly when they purchase or *sell units*.
- (3) This section also sets out common standards for how the amounts in relation to *unit* transactions are to be paid. These arrangements include the *initial offer* of *units*, the exchange of *units* for *scheme property* and *issues* and *cancellations* of *units* by an *ICVC*, or by the *trustee* of an *AUT*, carried out directly with the *unitholder*.
- (4) This section also sets out *rules* and *guidance* relating to the *authorised fund manager's* controls over the *issue* and *cancellation* of *units* including any box holdings.
- (5) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*.

### Initial offers

- 6.2.3 R (1) During the *initial offer* period, *units* may only be issued at the *initial price*.
- (2) The length of any *initial offer* should not be unreasonable when considered alongside the characteristics of the *authorised fund*.
- (3) The *authorised fund manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *depository* the *initial price* of any *unit* it has agreed to *sell* during the period of the *initial offer*.
- (4) The period of the *initial offer* comes to an end if the *authorised fund manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

**Initial offer: guidance**

- 6.2.4 G (1) Details of any *initial offer* period must be provided in the relevant *prospectus* as described in *COLL 4.2.5R 17(h)* (Table: contents of the prospectus).
- (2) It may be appropriate that the *initial offer* for a *scheme* operating limited *issue* or *limited redemption arrangements*, or intending to invest in illiquid assets, is longer than one for a *scheme* which does not have these features.

**Issue and cancellation of units by an ICVC**

- 6.2.5 R (1) *Units* in an *ICVC* are *issued* or *cancelled* by the *ACD* making a record of the *issue* or *cancellation* and of the number of the *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless *COLL 3.2.6R 11* (Table: contents of the instrument constituting the scheme) applies.
- (2) The time of the *issue* or *cancellation* under (1) is the time when the record is made.

**Issue and cancellation of units in an AUT**

- 6.2.6 R (1) The *trustee* must *issue* or *cancel units* in an *AUT* when instructed by the *manager*.

- (2) Any instructions given by the *manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).
- (3) If the *trustee* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancelled* or that to do so would not be in accordance with the *trust deed* or *prospectus*, it must notify the *manager* of that fact and it is then relieved of the obligation to *issue* or *cancel* those *units*.

**Issue and cancellation of units through an authorised fund manager**

- 6.2.7 R (1) The *authorised fund manager* may require, on agreement with the *depository*, or may permit, on the request of the investor, direct *issues* and *cancellations* of *units* by an *ICVC* or by the *trustee* of an *AUT*.
- (2) If (1) applies:
- (a) *the instrument constituting the scheme* must provide for this; and
  - (b) *the prospectus* must provide details of the procedure to be followed which must be consistent with the *rules* in this section.

**Controls over the issue and cancellation of units**

- 6.2.8 R (1) An *authorised fund manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.
- (2) An *authorised fund manager* must not:
- (a) for an *AUT*, when giving instructions to the *depository* for the *issue* or *cancellation* of *units*; or
  - (b) for an *ICVC*, when arranging for the *issue* or *cancellation* of *units*;
- do, or omit to do, anything which would, or might, confer on himself or an *associate* a benefit or advantage at the expense of a *unitholder* or a potential *unitholder*.

- (3) For the purpose of (1), the *authorised fund manager* may take into account instructions to *redeem units* at the following *valuation point* received before any time agreed with the *depository* for such purpose.

**Controls over the issue and cancellation of units – guidance**

- 6.2.9 G (1) As the *authorised fund manager* normally controls the *issue, cancellation, sale* and *redemption* of an *authorised fund's units*, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its *clients*.
- (2) SYSC 3.1.1 (Systems and controls) requires that a *firm* take reasonable care to establish and maintain such systems and controls as are appropriate to its business and *Principle 8* requires a *firm* to manage conflicts of interest between itself and a *customer* fairly.
  - (3) To manage the conflict of interest that arises, when an *authorised fund manager* gives an instruction to *issue* or *cancel units*, the *price* of the *units* should be calculated at the valuation point before or after the instruction has been given, in accordance with (4).
  - (4) An *authorised fund manager* should agree a period of time with the *depository* during which it will give instructions to *issue* or *cancel units*. Where the *authorised fund manager* operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next *valuation point* but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.
  - (5) The last *valuation point* should be used for the pricing of *units* where instructions are given before the expiry of the period of time agreed in (4); otherwise the next *valuation point* should be used.

- (6) Where an in specie *issue* or *cancellation* occurs it should be undertaken using the next *valuation point's price*.

**Modification to number of units issued or cancelled**

- 6.2.10 R (1) Any instruction for the *issue* or *cancellation* of *units* under *COLL 6.2.5R* (Issue and cancellation of units by an ICVC) or *COLL 6.2.6R* (Issue and cancellation of units in an AUT) may be modified but only if the *depository* agrees and has taken reasonable care to determine that:
- (a) the modification corrects an error in the instruction; and
  - (b) the error is an isolated one.
- (2) Any error in (1) must be corrected within the payment period applicable under *COLL 6.2.13R* (Payment for units issued) or *COLL 6.2.14R* (Payment for cancelled units).

**Compensation for box management errors**

- 6.2.11 R (1) Where the *authorised fund manager* has not complied with *COLL 6.2.8R(1)* (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.
- (2) The *authorised fund manager* need not reimburse the *authorised fund* when:
- (a) the amount under (1) is not, in the *depository's* opinion, material to the *authorised fund*;
  - (b) the *authorised fund manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
  - (c) the requirements of *COLL 6.2.10R* (Modification to number of units issued or cancelled) are complied with.

**Box management errors guidance**

- 6.2.12 G Explanatory table: This table belongs to *COLL 6.2.2G(4)* (Purpose).

<b>Correction of box management errors</b>	
<b>1</b>	<b>Controls by authorised fund managers</b>
	An <i>authorised fund manager</i> needs to be able to demonstrate that it has effective controls over:
(1)	its calculations of what <i>units</i> are owned by it (its 'box'); and
(2)	compliance with <i>COLL</i> 6.2.8R which is intended to prevent a negative box.
<b>2</b>	<b>Controls by depositaries</b>
(1)	Under <i>COLL</i> 6.6.4 (General duties of the depositary), a <i>depositary</i> should take reasonable care to ensure that a scheme is managed in accordance with <i>COLL</i> 6.2 (Dealing) and 6.3 (Pricing and valuation).
(2)	A <i>depositary</i> should therefore make a regular assessment of the <i>authorised fund manager's</i> box management procedures (including supporting systems) and controls. This should include reviewing the <i>authorised fund manager's</i> controls and procedures when the <i>depositary</i> assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.
<b>3</b>	<b>Recording and reporting of box management errors</b>
(1)	An <i>authorised fund manager</i> should record all errors which result in a breach of <i>COLL</i> 6.2.8R (Controls over the issue and cancellation of units) and as soon as an error is discovered, the <i>authorised fund manager</i> should report the fact to the <i>depositary</i> , together with details of the action taken, or to be taken, to avoid repetition of the error.
(2)	A <i>depositary</i> should report material box management errors to the <i>FSA</i> immediately. Materiality should be determined by taking into account a number of factors including: <ul style="list-style-type: none"> <li>(a) the implications of the error for the sufficiency of controls put into place by the <i>authorised fund manager</i>;</li> <li>(b) the significance of any breakdown in the <i>authorised fund manager's</i> management controls or other checking procedures;</li> <li>(c) the significance of any failure of systems or back-up arrangements;</li> <li>(d) the duration of an error; and</li> <li>(e) the level of compensation due to the <i>scheme</i>, and an <i>authorised fund manager's</i> ability (or otherwise) to meet claims for compensation in full.</li> </ul>
(3)	A <i>depositary</i> should also make a return to the <i>FSA</i> (in the manner <i>SUP</i> 16.6.8R) on a quarterly basis.

### **Payment for units issued**

- 6.2.13 R (1) The *authorised fund manager* must, by the close of business on the fourth *business day* following the *issue* of any *units* arrange for payment of the value of the *units issued* and any payment required under *COLL* 6.3.7R (SDRT provision) and *COLL* 6.3.8R (Dilution) to the *trustee* or the *ICVC*.
- (2) The *authorised fund manager* must make the payment referred to in (1) in cash or cleared funds unless *COLL* 6.2.15R (In specie issue and cancellation) applies.

- (3) Where the *authorised fund manager* has not complied with (1), it must reimburse the *authorised fund* for any lost interest unless the amount involved is not, in the *depository's* opinion, material to the *authorised fund*.

**Payment for cancelled units**

- 6.2.14 R (1) On *cancelling units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *trustee* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay the *price* of the *units* (less any deduction required under *COLL 6.3.7R* and *COLL 6.3.8R*) to the *authorised fund manager* or, where relevant, the *unitholder* or, for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed*.
- (2) If the *authorised fund manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in *COLL 5* (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.
- (3) If (2) applies, the *authorised fund manager* must take reasonable steps to rectify the currency shortage as quickly as possible.
- (4) This *rule* does not apply where *COLL 6.2.15R* is in operation.
- (5) Nothing in this section requires an *ICVC*, a *depository* or an *authorised fund manager* to part with *money* or to transfer *scheme property* for a *cancellation* or *redemption* of *units* where any *money* due on the earlier *issue* or *sale* of those *units* has not been received.

**In specie issue and cancellation**



- 6.2.15 R The *depository* may take into or pay out of *scheme property* assets other than *cash* as payment for the *issue* or *cancellation* of units but only if:
- (1) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of *unitholders*; and
  - (2) the *instrument constituting the scheme* so provides.

#### **Sale and redemption**

- 6.2.16 R (1) In accordance with *COLL* 4.2.5R 17 (Table: contents of the prospectus), the *authorised fund manager* must describe the arrangements for the *sale* and *redemption* of *units* in the *prospectus*.
- (2) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* in the *authorised fund*, in accordance with the conditions in the *instrument constituting the scheme* and the *prospectus* unless:
- (a) it has reasonable grounds to refuse such *sale*; or
  - (b) the issue of units is prevented under *COLL* 6.2.18R (Limited issue).
- (3) Subject to *COLL* 6.2.19R (Limited redemption) and *COLL* 6.2.21R (Deferred redemption), the *authorised fund manager* must, at all times during the *dealing day*, on request of any qualifying *unitholder*, effect the *redemption* of *units* in accordance with the conditions in the *instrument constituting the scheme* and the *prospectus* unless it has reasonable grounds to refuse such *redemption*.
- (4) On agreeing to a *redemption* of *units* in (3), the *authorised fund manager* must pay the *unitholder* the appropriate proceeds of *redemption* within the period specified in (5) unless the *authorised fund manager* has reasonable grounds for withholding all or any part of the proceeds.
- (5) The period in (4) expires at the close of business on the fourth *business day* following the later of:

- (a) the *valuation point* at which the *price* for the *redemption* was determined; or
  - (b) the time when the *authorised fund manager* has all the duly executed instruments and authorisations to effect (or enable the *authorised fund manager* to effect) the transfer of title to the *units*.
- (6) Except where (7) applies, and subject to *COLL 6.2.21R* (Deferred redemption), the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of buying or selling *units* if later (or, for a *sale* or *redemption* at an *historic price*, at the *price* determined at the last *valuation point*).
- (7) Where the *authorised fund* operates *limited redemption arrangements*, the *authorised fund manager* must *sell* or *redeem units* at a price determined no later than the expiry of a period of 185 *days* from the date of the receipt and acceptance of the instruction to *sell* or *redeem*.
- (8) The *authorised fund manager* must not *sell* a *unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any payment required under *COLL 6.3.7R* and *COLL 6.3.8R*.
- (9) The *authorised fund manager* must not redeem a *unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deduction under *COLL 6.3.7R* and *COLL 6.3.8R*.
- (10) Paragraphs (4), (5) and (9) do not apply where the *authorised fund manager* is buying units as *principal* on an investment exchange (for an *AUT* in accordance with a power in the *trust deed*) and settlement will be made in accordance with the rules of that exchange.

### **Sale and redemption: guidance**

- 6.2.17 G (1) The *prospectus* of an *authorised fund* that does not operate on the basis of *historic prices* may allow the *authorised fund manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem* units at that *valuation point*. In order to protect *customers'* interests, the cut-off point should be no earlier than the close of business on the *business day* before the *valuation point* it relates to. If there is more than one *valuation point* in a *day* the cut-off should not be before any previous *valuation point*.
- (2) Where the *authorised fund* operates *limited redemption arrangements*, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185 *day* limit in *COLL* 6.2.16R(7) (Sale and redemption) is complied with.
- (3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to *sell* or *redeem* to the *authorised fund manager* but not to differentiate between *unitholders* or potential *unitholders*.

### **Limited Issue**

- 6.2.18 R (1) If an *authorised fund* limits the *issue* of any *class* of *unit*, the *prospectus* of an *authorised fund* must provide for the circumstances and conditions when *units* will be issued.
- (2) Where (1) applies, the *authorised fund manager* may not provide for the further *issue* of *units* unless, at the time of the issue, he is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *scheme's* investment objective or materially prejudicing existing *unitholders*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for the *issue* of *units* provided there is no prejudice to the interests of any *unitholder*.

### **Limited redemption**

- 6.2.19 R (1) The *instrument constituting the scheme* and the *prospectus* of a *non-UCITS retail fund* that invests substantially in *approved immovables*, or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.
- (2) Where (1) applies, the *scheme* must provide for *redemptions* at least once in every six *months*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for *redemption* of *units* provided there is no prejudice to the interests of any *unitholder*.

### **Limited redemption: guidance**

- 6.2.20 G The conditions for *limited redemption arrangements* in COLL 6.2.19R should be considered, for *AUTs* as well as for *ICVCs*, in conjunction with *AUTH* Appendix 2 (Meaning of an open-ended investment company) and *AUTH* Appendix 2.8 (The investment condition: the ‘expectation test’ (section 236(3)(a) of the *Act*)).

### **Deferred redemption**

- 6.2.21 R (1) The *instrument constituting the scheme* and the *prospectus* of an *authorised fund* which has at least one *valuation point* on each *business day*, may permit deferral of *redemptions* at a *valuation point* to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund’s* value.
- (2) Any deferral of *redemptions* under (1) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:
- (a) the consistent treatment of all *unitholders* who have sought to redeem *units* at any *valuation point* at which redemptions are deferred; and
- (b) that all *deals* relating to an earlier *valuation point* are completed before those relating to a later *valuation point* are considered.

### **Deferred redemption: guidance**

- 6.2.22 G In times of high levels of *redemption*, deferred *redemption* will enable the *authorised fund manager* to protect the interests of continuing *unitholders* by allowing it to match the sale of *scheme property* to the level of *redemptions*. This should reduce the impact of *dilution* on the *scheme*.

### 6.3 Valuation and pricing

#### Application

- 6.3.1 R This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.

#### Purpose

- 6.3.2 G (1) In accordance with *Principle 6*, this section is intended to ensure that the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* is responsible for valuing the *scheme property* of the *authorised fund* it manages and for calculating the *price of units* in the *authorised fund*. This section protects *clients* by:
- (a) setting out *rules* and guidance to ensure the *price of units* in an *authorised fund* is calculated fairly and regularly;
  - (b) allowing for the *authorised fund manager* to mitigate the effects of any *dilution* (reduction) in the value of the *scheme property* by:
    - (i) payment of stamp duty reserve tax (SDRT) in relation to certain *unit* transactions; and
    - (ii) buying and selling underlying investments as a result of the *issue* or *cancellation of units*;
  - (c) making appropriate provision to ensure *clients* are treated fairly where *units* are being dealt with at a known (historic) *price*; and
  - (d) ensuring that the *price* is made public in an appropriate manner.
- (3) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*.

#### Valuation

- 6.3.3 R To determine the *price of units* the *authorised fund manager* must carry out a fair and accurate valuation of all the *scheme property*.

**Valuation points**

- 6.3.4 R (1) An *authorised fund* must not have fewer than two regular *valuation points* in any *month* and if there are only two *valuation points* in any *month*, the regular *valuation points* must be at least two weeks apart.
- (2) The *prospectus* of a *scheme* must contain information about its regular *valuation points* for the purposes of *dealing in units* in accordance with COLL 4.2.5R 16 (Table: contents of the prospectus).
- (3) Where a *scheme* operates *limited redemption arrangements*, (1) does not apply and the *valuation points* must be stated in the *prospectus* but must not be set more than six *months* apart.
- (4) Where a *scheme* operates *limited redemption arrangements*, it must be valued and *prices* published in the manner set out in COLL 6.3.11R (Publication of prices) at least once in every *month*.
- (5) In (4), a *valuation point* for the purpose of publishing *prices* only, does not make it a *valuation point* for the purpose of (2) unless it is disclosed as such in the *prospectus*.
- (6) *Higher volatility funds* must have at least one *valuation point* every *business day*.
- (7) No *valuation points* are required during the period of any *initial offer*.
- (8) The *authorised fund manager* may determine to have an additional *valuation point* for an *authorised fund* as a result of market movement under COLL 6.3.9 (Forward and historic pricing) or otherwise, in which case he must inform the *depository*.

**Price of a unit**

- 6.3.5 R (1) The *price* of a *unit* of any *class* must be calculated by reference to the net value of *scheme property* and must be calculated in accordance with the provisions of the *prospectus*.

- (2) Any *unit price* calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.

### Valuation and pricing guidance

6.3.6 G Table: This table belongs to *COLL 6.3.2G(2)(a)*.

Valuation and pricing	
1	<b>The valuation of scheme property</b>
(1)	Where possible, <i>investments</i> should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.
(2)	An <i>investment</i> for which different <i>prices</i> are quoted according to whether it is being bought or sold should be valued at its mid-market price. The <i>instrument constituting the scheme</i> should set out the valuation method that will apply where a single price for buying and selling a <i>security</i> is quoted.
(3)	Any part of the <i>scheme property</i> of an <i>authorised fund</i> that is not an <i>investment</i> should be valued at a fair value, but for immovables this is subject to <i>COLL 5.6.20R(3)(f)</i> (Standing independent valuer and valuation).
(4)	For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the <i>investment</i> or other part of the <i>scheme property</i> should be excluded from the value of an <i>investment</i> or other part of the <i>scheme property</i> .
(5)	Where the <i>authorised fund manager</i> has reasonable grounds to believe that: <ul style="list-style-type: none"> <li>(a) no reliable price exists for a <i>security</i> at a <i>valuation point</i>; or</li> <li>(b) the most recent price available does not reflect the <i>authorised fund manager's</i> best estimate of the value of a <i>security</i> at the <i>valuation point</i>;</li> </ul> it should value an <i>investment</i> at a price which, in its opinion, reflects a fair and reasonable price for that <i>investment</i> (the fair value price).
(6)	The circumstances which may give rise to a fair value price being used include: <ul style="list-style-type: none"> <li>(a) no recent trade in the <i>security</i> concerned; or</li> <li>(b) the occurrence of a significant event since the most recent closure of the market where the price of the <i>security</i> is taken.</li> </ul> In (b), a significant event is one that means the most recent price of a <i>security</i> or a basket of <i>securities</i> is materially different to the price that it is reasonably believed would exist at the <i>valuation point</i> had the relevant market been open.
(7)	In determining whether to use such a fair value price, the <i>authorised fund manager</i> should include in his consideration: <ul style="list-style-type: none"> <li>(a) the type of <i>authorised fund</i> concerned;</li> <li>(b) the <i>securities</i> involved;</li> <li>(c) the basis and reliability of the alternative <i>price</i> used; and</li> <li>(d) the <i>authorised fund manager's</i> policy on the valuation of <i>scheme property</i> as disclosed in the <i>prospectus</i>.</li> </ul>



	(8)	The <i>authorised fund manager</i> should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.
	(9)	Where a <i>unit price</i> is determined using properly applied fair value prices in accordance with policies in (8), subsequent information that indicates the <i>price</i> should have been different from that calculated will not normally give rise to an instance of incorrect pricing.
<b>2</b>	<b>The pricing controls of the authorised fund manager</b>	
	(1)	An <i>authorised fund manager</i> needs to be able to demonstrate that it has effective controls over its calculations of <i>unit prices</i> .
	(2)	The controls referred to in (1) should ensure that: <ul style="list-style-type: none"> <li>(a) asset prices are accurate and up to date;</li> <li>(b) <i>investment</i> transactions are accurately and promptly reflected in valuations;</li> <li>(c) the components of the valuation (including stock, cash, and <i>units</i> in issue), are regularly reconciled to their source or prime records and any reconciling items resolved promptly and debtors reviewed for recoverability;</li> <li>(d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;</li> <li>(e) compliance with the investment and borrowing powers is regularly reviewed;</li> <li>(f) dividends are accounted for as soon as stocks are quoted ex-dividend (unless it is prudent to account for them on receipt);</li> <li>(g) fixed interest dividends, interest and expenses are accrued at each valuation point,</li> <li>(h) tax positions are regularly reviewed and adjusted, if necessary;</li> <li>(i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated; and</li> <li>(j) the fund manager regularly reviews the portfolio valuation for accuracy.</li> </ul>
	(3)	In exercising its pricing controls, the <i>authorised fund manager</i> may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the fund or the materiality of any effect on the <i>price</i> .
	(4)	Evidence of the exercise of the pricing controls should be retained.
	(5)	Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in an <i>authorised fund manager's</i> favour, will make demonstrating effective controls more difficult.
	(6)	Where the pricing function is delegated to a third party, COLL 6.6.15R (Committees and delegation) will apply.
<b>3</b>	<b>The depositary's review of the authorised fund manager's systems and controls</b>	

	(1)	This section provides details of the types of checks a <i>depository</i> should carry out to be satisfied that the <i>authorised fund manager</i> adopts systems and controls which are appropriate to ensure that <i>prices</i> of <i>units</i> are calculated in accordance with this section and to ensure that the likelihood of incorrect <i>prices</i> will be minimised. These checks also apply where an <i>authorised fund manager</i> has delegated all or some of its pricing functions to a third party.
	(2)	A <i>depository</i> should thoroughly review an <i>authorised fund manager's</i> systems and controls to confirm that they are satisfactory. The <i>depository's</i> review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.
	(3)	A review should be performed when the <i>depository</i> is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.
	(4)	A review should be carried out more frequently where a <i>depository</i> knows or suspects that an <i>authorised fund manager's</i> systems and controls are weak or are otherwise unsatisfactory.
	(5)	Additionally, a <i>depository</i> should from time to time review other aspects of the valuation of the <i>scheme property</i> of each <i>authorised fund</i> for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, <i>units</i> in issue, <i>securities</i> prices (and in particular the prices of unapproved <i>securities</i> and the basis for the valuation of unquoted <i>securities</i> ) and any other relevant matters, for example an accumulation factor or a currency conversion factor.
	(6)	A <i>depository</i> should ensure that any issues, which are identified in any such review, are properly followed up and resolved.
<b>4</b>	<b>The recording and reporting of instances of incorrect pricing</b>	
	(1)	An <i>authorised fund manager</i> should record each instance where the <i>price</i> of a <i>unit</i> is incorrect as soon as the error is discovered, and report the fact to the <i>depository</i> together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.
	(2)	In accordance with COLL 6.6.11G (Duty to inform the FSA), the <i>depository</i> should report any breach of the rules in COLL 6.3 immediately to the FSA. However, notification should relate to instances which the <i>depository</i> considers material only.
	(3)	A <i>depository</i> should also report to the FSA immediately any instance of incorrect pricing where the error is 0.5% or more of the <i>price</i> of a <i>unit</i> , where a <i>depository</i> believes that reimbursement or payment is inappropriate and should not be paid by an <i>authorised fund manager</i> .
	(4)	In accordance with SUP 16.6.8R, a <i>depository</i> should also make a return to the FSA on a quarterly basis which summarises the number of instances of incorrect pricing during a particular period.

5	The rectification of pricing breaches	
	(1)	COLL 6.6.3R (Functions of the authorised fund manager) places a duty on the <i>authorised fund manager</i> to take action to reimburse affected <i>unitholders</i> , former <i>unitholders</i> , and the <i>scheme</i> itself, for instances of incorrect pricing, except if it appears to the <i>depository</i> that the breach is of minimal significance.
	(2)	A <i>depository</i> may consider that the instance of incorrect pricing is of minimal significance if: (a) the <i>authorised fund manager</i> and <i>depository</i> meet the standards of control set out in Section 2 and Section 3 of this Table; and (b) the error in pricing of a <i>unit</i> is less than 0.5% of the correct <i>price</i> .
	(3)	In determining (2), if the instance of incorrect pricing is due to one or more factors or exists over a period of time, each <i>price</i> should be considered separately.
	(4)	If a <i>depository</i> deems it appropriate, it may, in spite of the circumstances outlined in (2), require a payment from the <i>authorised fund manager</i> or from the <i>authorised fund</i> to the <i>unitholders</i> , former <i>unitholders</i> , the <i>authorised fund</i> or the <i>authorised fund manager</i> (where appropriate).
	(5)	The <i>depository</i> should satisfy itself that any payments required following an instance of incorrect pricing are accurately and promptly calculated and paid.
	(6)	If a <i>depository</i> considers that reimbursement or payment is inappropriate, it should report the matter to the <i>FSA</i> , together with its recommendation and justification. The <i>depository</i> should take into account the need to avoid prejudice to the rights of <i>unitholders</i> , or the rights of <i>unitholders</i> in a <i>class</i> of <i>units</i> .
	(7)	It may not be practicable, or in some cases legally permissible, for the <i>authorised fund manager</i> to obtain reimbursement from <i>unitholders</i> , where the <i>unitholders</i> have benefited from the incorrect <i>price</i> .
	(8)	In all cases where reimbursement or payment is required, amounts due to be reimbursed to <i>unitholders</i> for individual sums which are reasonably considered by the <i>authorised fund manager</i> and <i>depository</i> to be immaterial, need not normally be paid.

### SDRT Provision

- 6.3.7 R (1) The *authorised fund manager* may, in accordance with the *prospectus*, require the payment of an *SDRT provision* for the *issue* or *sale* of *units* or any *class* of *units* or the deduction of an *SDRT provision* for the *redemption* or *cancellation* of *units* or any *class* of *units*.

- (2) Any such payment or deduction becomes due at the same time as payment or transfer of property becomes due for the *issue, sale, redemption* or *cancellation*.
- (3) Any payment referred to in (1) must be paid to the *depository* to become part of *scheme property* as soon as practicable after receipt.
- (4) As soon as practicable after each *valuation point*, the *authorised fund manager* must notify the *depository* of the transactions, or types of transactions for which an *SDRT provision* is applied and the amounts or rates of those *SDRT provisions*.

**Dilution**

- 6.3.8 R (1) When arranging to *sell, redeem, issue* or *cancel units*, or when *units* are *issued* or *cancelled* under COLL 6.2.7R (Issues and cancellations through an authorised fund manager), an *authorised fund manager* is permitted to:
- (a) require the payment of a *dilution levy*; or
  - (b) make a *dilution adjustment*; or
  - (c) neither require a *dilution levy* nor make a *dilution adjustment*;
- in accordance with its statements in the *prospectus* required by COLL 4.2.5R 18 (Table: contents of the prospectus).
- (2) An *authorised fund manager* operating either a *dilution levy* or a *dilution adjustment*, must operate that measure in a fair manner to reduce *dilution* and solely for that purpose.
  - (3) A *dilution levy* becomes due at the same time as payment or transfer of property becomes due for the *issue, sale, redemption* or *cancellation* and any such payment in respect of a *dilution levy* must be paid to the *depository* to become part of *scheme property* as soon as practicable after receipt.

- (4) A *dilution adjustment* may be made as part of the calculation of the *unit price* for the purpose of reducing *dilution* in the *scheme* or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the *issue* or *cancellation* of *units*.
- (5) Where the *authorised fund manager* decides to make or not to make a *dilution adjustment*, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an *affected person*.
- (6) As soon as practicable after a *valuation point*, the *authorised fund manager* must provide the *depository* with the amount or rate of any *dilution adjustment* made to the *price* or any *dilution levy* applied.

#### **Forward and historic pricing**

- 6.3.9 R (1) For the *sale* and *redemption* of *units*, the *authorised fund manager* must, in accordance with the *prospectus* of an *authorised fund*, operate on the basis of *forward price* only or *historic prices*.
- (2) If *forward prices* only are to be used, all deals must be at a *forward price*.
  - (3) *Forward prices* for the *sale* and *redemption* of *units* must be used:
    - (a) for a *higher volatility fund*;
    - (b) where the regular *valuation points* are more than one *day* apart;
    - (c) if the request to deal reaches the *authorised fund manager* through the post or by any similar form of non-interactive communication;
    - (d) for an *issue* or *cancellation* under COLL 6.2.7 (Issue and cancellation of units through an authorised fund manager);
    - (e) if the applicant for the *sale* or *redemption* so requests; or

- (f) where the *authorised fund manager* has reason to believe at any time that the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the last calculated *price*, unless the *authorised fund manager* has decided to carry out an additional valuation.
- (4) If an *authorised fund manager* operates *historic prices*, the *prospectus* must detail the circumstances under which *deals* in the *authorised fund*, individually or otherwise, will nevertheless be carried out on a *forward price* basis or when the *authorised fund* will elect to move to *forward prices* or declare an additional *valuation point*.
- (5) Where the *authorised fund* elects to move to *forward prices* temporarily in accordance with (4), such election will only apply until the next *valuation point*.
- (6) All *sub-funds* of a *scheme* which is an *umbrella* must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a *forward price* basis temporarily under this *rule*.

**Historic pricing: guidance**

- 6.3.10 G The *authorised fund manager* should advise the *depository* of the date and time of any decision to use *forward prices*.

**Publication of prices**

- 6.3.11 R Where the *authorised fund manager* is prepared to deal in *units*, or is willing to *issue* or cancel *units*, under *COLL* 6.2.7, it must make the dealing *prices* public in an appropriate manner.

**Manner of price publication**

- 6.3.12 G (1) In determining the appropriate manner of making *prices* public, the *authorised fund manager* should ensure that:
- (a) a *unitholder* or potential *unitholder* can obtain the *prices* at a reasonable cost;
  - (b) *prices* are available at reasonable times;

- (c) publication is consistent with the manner and frequency at which the *units* are sold;
  - (d) the manner of publication is disclosed in the *prospectus*;  
and
  - (e) *prices* are published in a consistent manner.
- (2) Examples of what might be deemed appropriate include:
- (a) publication in a national newspaper;
  - (b) supply through an advertised local rate or freephone telephone number;
  - (c) publication on the internet;
  - (d) inclusion in a database of *prices* which is publicly available; or
  - (e) communication to all existing *unitholders*.
- (3) The *authorised fund manager* should make previous *prices* available to any *unitholder* or potential *unitholder*.

## 6.4 Title and registers

### Application

- 6.4.1 R (1) This section applies to a *manager* and a *trustee* of an *AUT*.  
(2) *COLL* 6.4.9 (Plan registers) also applies to the *ACD*, any other *director* and the *depository* of an *ICVC*.

### Purpose

- 6.4.2 G The aim of this section is to protect *consumers*, by setting out the requirements for a *register* of *unitholders* for an *AUT* and for a *plan register* for an *authorised fund*, so a proper record of ownership of *units* is maintained, whether held directly or indirectly through a *group plan*.

### Explanation of this section

- 6.4.3 G (1) This section deals with matters relating to the *register* of *unitholders* of *units* in an *AUT* including its establishment and contents. The *manager* or *trustee* may be responsible for the *register*. In any event, the *person* responsible for the *register* must be stated in the *trust deed* and this section details what his duties are. The provisions relating to *documents evidencing title to units*, including the issue of *bearer certificates* are dependent on the provisions in the *trust deed* and their operation should be set out in the *prospectus*.  
(2) For an *ICVC*, requirements as to the *register* of *holders* and transfer of *units* are contained in Schedule 3 of the *OEIC Regulations* (Register of shareholders).  
(3) *COLL* 6.4.9R makes provision to ensure that if the cost of the *plan register* is borne by the *scheme*, *plan investors* have the same rights in respect of notice and disclosure as *unitholders* on the main *register*.

### Register: general requirements and contents

- 6.4.4 R (1) Either the *manager* or the *trustee* (as nominated in the *trust deed*) must establish and maintain a *register* of *unitholders* as a *document* in accordance with this section.



- (2) The *manager* or *trustee* in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (3) The *register* must contain:
  - (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered) other than *units* represented by *bearer certificates*;
  - (b) the number of *units* of each *class* held by each *unitholder* (other than *units* represented by *bearer certificates*);
  - (c) the date on which the *unitholder* was registered for *units* standing in his name (other than *units* represented by *bearer certificates*); and
  - (d) the number of *units* of each *class* currently in *issue*, including *bearer certificates* and the number of *units* of those *bearer certificates*.
- (4) No notice of any trust, express, implied or constructive which may be entered in the *register* is binding on the *manager* or *trustee*, but this does not affect their obligations under *COLL* 6.4.9R (Plan registers).
- (5) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
- (6) The *person* responsible for the *register* in (1) must:
  - (a) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
  - (b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;

- (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager*), during office hours, but it may be closed for periods not exceeding 30 *business days* in any one year;
- (d) supply free of charge to any *unitholder* or his authorised representative a copy of the entries on the *register* relating to that *unitholder* on request;
- (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
- (f) carry out any conversion of *units* allowed for by *COLL* 6.4.8R (Conversion of units) after consultation with the *manager* or *trustee*, as appropriate.

**The manager as unitholder**

- 6.4.5 R (1) If no *person* is entered in the *register* as the *unitholder* of a *unit*, the *manager* must be treated as the *unitholder* of each such *unit* which is in *issue* (other than a *unit* which is represented by a *bearer certificate*).
- (2) Where *units* are transferred to the *manager*, they need not be *cancelled* and the *manager* need not be entered on the *register* as the new *unitholder*.

**Transfer of units by act of parties**

- 6.4.6 R (1) Every *unitholder* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless:
- (a) it is permitted by the *trust deed* or *prospectus*; and

- (b) the transfer is excluded by Schedule 19 of the Finance Act 1999 from a charge to stamp duty reserve tax, or there has been paid to the *trustee*, for the account of the *AUT*, an amount agreed between the *trustee* and the *manager* not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the *units* being transferred.
- (2) Every instrument of transfer of *units* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (3) Every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
  - (a) any necessary documents that may be required by legislation; and
  - (b) any other evidence reasonably required by the *person* responsible for the *register*.
- (4) The details of instruments of transfer must be kept for a period of six years from the date of its registration.
- (5) On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

**Certificates (including bearer certificates)**

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

- (2) The person responsible for the *register* must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming *units* require the *unitholder* to surrender that document.
- (3) *Bearer certificates* may only be issued if they are permitted by the *instrument constituting the scheme*.

**Conversion of units**

- 6.4.8 R Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

**Plan registers**

- 6.4.9 R (1) The *ACD* and any other *directors* of an *ICVC* or the *person* responsible for the *register* of an *AUT* may arrange for a *plan register* to be established and maintained.
- (2) Where payments are made out of *scheme property* to establish and maintain a *plan register*, *plan investors* must be treated as *unitholders* for the purposes of *COLL* 4.3 to 4.5 and *COLL* 6.4.4R (Register: general requirements and contents).

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

### Application

6.5.1 R This section applies in accordance with *COLL 6.5.2R* (Table of application).

6.5.2 R Table of application  
This table belongs to *COLL 6.5.1R*.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other director of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
6.5.1R	x	x	x	x	x	x
6.5.3R	x	x	x	x		
6.5.4R		x	x	x		
6.5.5R		x	x			
6.5.6R	x			x		
6.5.7R					x	x
6.5.8R					x	x
6.5.9R					x	x
6.5.10R		x		x	x	x
Note: "x" means "applies", but not every paragraph in every <i>rule</i> will necessarily apply.						

### Appointment of an ACD

- 6.5.3 R (1) The *directors* (or *director*) of an *ICVC* must take all practicable steps to ensure the *ICVC* has at all times as its *ACD* a *person* who is qualified to act as *ACD*.
- (2) If the *ICVC* ceases to have any *director*, the *depositary* must exercise its powers, under the *OEIC Regulations*, to appoint a *person* to be an *ACD* of the *ICVC*.
- (3) The appointment of an *ACD* (other than the first *ACD*), under (1) or (2), must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 *months* from the date the appointment takes

effect, unless the appointment has been approved by a resolution of the *unitholders* before the close of that annual general meeting or expiration of that 12 *month* period (as the case may be).

- (4) An *ACD* must not voluntarily terminate its appointment as *ACD* unless the termination is effective at the same time as the commencement of the appointment of a successor *ACD*.
- (5) (a) In the event of:
  - (i) any *person* becoming or ceasing to be a *director*;
  - (ii) the appointment of an *ACD* being terminated;
  - (iii) a new *ACD* being appointed; or
  - (iv) a corporate *director* (including the *ACD*) becoming aware of any change of its *controller*;the *FSA* must immediately be notified in accordance with (b).
- (b) In the case of:
  - (i) (a)(i), by the *ACD*;
  - (ii) (a)(ii), by the *ACD* whose appointment is being terminated;
  - (iii) (a)(iii), by the new *ACD*; and
  - (iv) (a)(iv), by the corporate *director* concerned.

#### **Termination of appointment of an ACD**

- 6.5.4 R (1) The appointment of an *ACD* terminates immediately upon it ceasing to be a *director*.
- (2) The appointment of an *ACD* terminates if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of *directors* of the *ICVC*, is given to the *ACD*.
- (3) If there is no *director* other than the *ACD*, the appointment of the *ACD* terminates if a notice of termination of that appointment is given by the *depository* to the *ACD* and to the *ICVC*, following any of the following events:
- (a) the calling of a meeting to consider a resolution for winding up the *ACD*;

- (b) an application being made to dissolve the *ACD* or to strike it off the Register of Companies;
  - (c) the presentation of a petition for the winding up of the *ACD*;
  - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *ACD's* creditors;
  - (e) the appointment of a receiver to the *ACD* (whether an administrative receiver or a receiver appointed over particular property);
  - (f) anything equivalent to (a) to (e) above occurring in respect of the *ACD* in a jurisdiction outside the *United Kingdom*.
- (4) Any termination under (2) or (3) takes effect when the notice is given, or on any subsequent time for its effect stated in the notice, or, if later, the time at which the termination is permitted to take effect under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).
- (5) The *depository* must (unless the termination takes effect at the same time as the appointment of a successor *ACD*) ensure that the unitholders are informed of the termination of the appointment of an *ACD*.
- (6) The *depository* is entitled to be reimbursed out of the *scheme property* for its out of pocket expenses in complying with (5).

**Other directors**

- 6.5.5 R (1) Any *directors* of an *ICVC* other than the *ACD* must exercise reasonable care to ensure that the *ACD* undertakes the responsibilities allocated under *COLL 6.6.3R* (Functions of the authorised fund manager) in a competent manner and the *ACD* must give those *directors* the information and explanations they consider necessary for this purpose.
- (2) A *director* of an *ICVC* must not appoint an alternate *director*.

- (3) When there is no *person* acting as *ACD*, the *directors* of an *ICVC* have the functions of an *ACD* under *COLL* 6.6.3R, but this does not affect the powers of the *directors* under *COLL* 6.6.15R (Committees and delegation).
- (4) When (3) applies, the *directors* must retain the services of one or more *authorised persons* to assist them in performing the functions referred to in *COLL* 6.6.3R (1) and (2).

**ICVC without a director**

- 6.5.6 R If the *ICVC* ceases to have any *directors*, the *depository* may:
- (1) retain the services of an *authorised person* to carry out the functions referred to in *COLL* 6.6.3R(3)(a) and(b); or
  - (2) manage the *scheme property* itself on behalf of the *ICVC* until a *director* is appointed or the winding up of the *ICVC* is commenced provided it is not prohibited from doing so by any law or *rule*.

**Replacement of a manager**

- 6.5.7 R (1) The *manager* of an *AUT* is subject to removal by written notice by the *trustee* upon any of the following events:
- (a) the calling of a meeting to consider a resolution for winding up the *manager*;
  - (b) an application being made to dissolve the *manager* or to strike it off the Register of Companies;
  - (c) the presentation of a petition for the winding up of the *manager*;
  - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *manager's* creditors;
  - (e) the appointment of a receiver to the *manager* (whether an administrative receiver or a receiver appointed over particular property);
  - (f) anything equivalent to (a) to (e) above occurring in respect of the *manager* in a jurisdiction outside the *United Kingdom*;



- (g) the *trustee* forming the reasonable opinion, and stating in writing, that a change of *manager* is desirable in the interest of *unitholders*;
  - (h) a resolution of *unitholders* being passed to remove the *manager*; or
  - (i) the *unitholders* of three quarters in value of the *units in existence* (excluding *units* held or treated as held by the *manager* or by any *associate* of the *manager*) making a request in writing to the *trustee* that the *manager* should be removed.
- (2) On receipt of a notice by the *trustee* under (1), the *manager* of the *AUT* ceases to be the *manager*; and the *trustee* must by deed appoint another *person* eligible under the *Act* to be the *manager* of the *AUT* upon and subject to that other entering into such deed or deeds as the *trustee* may require.
- (3) If the name of the *AUT* contains a reference to the name of the former *manager*, the former *manager* is entitled to require the new *manager* and the *trustee* immediately on receipt of a notice under (1) to propose a change in the name of the *AUT*.

#### **Retirement of a manager of an AUT**

- 6.5.8 R (1) The *manager* of an *AUT* has the right to retire in favour of another *person* eligible under the *Act* and approved in writing by the *trustee* upon:
- (a) the retiring *manager* appointing that *person* by deed as *manager* in its place and assigning to that *person* all its rights and duties as such a *manager*; and
  - (b) the new *manager* entering into such deeds as the *trustee* reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due performance of its duties as the *manager* of the *AUT*.
- (2) Upon retirement, the retiring *manager*:
- (a) subject to (3), is released from all further obligations under the *rules* in this sourcebook and under the *trust*

*deed*; and

- (b) may retain any consideration paid to it in connection with the change without having to account for it to any *unitholder*.
- (3) Sub-paragraph (2)(a) does not affect the rights of the *trustee* or any other *person* in respect of any act or omission on the part of the retiring *manager* before his retirement.

**Consequences of removal or retirement of a manager of an AUT**

- 6.5.9 R (1) Upon the removal or retirement of the *manager*, the removed or retiring *manager*:
- (a) is entitled to be recorded in the *register* for those *units* continued to be held or treated as held by it; and
  - (b) may require the *trustee* to issue to it a certificate for those *units* (if not previously issued).
- (2) Paragraph (1) is subject to any restriction in the *prospectus* relating to the permitted categories of *unitholders*.

**Retirement of the depositary**

- 6.5.10 R (1) The *depositary* of an *authorised fund* may not retire voluntarily except upon the appointment of a new *depositary*.
- (2) The *depositary* of an *authorised fund* must not retire voluntarily unless, before its retirement, it has ensured that the new *depositary* has been informed of any circumstance of which the retiring *depositary* has informed the *FSA*.
- (3) When the *depositary* of an *authorised fund* wishes to retire or ceases to be an *authorised person*, the *authorised fund manager* may, subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) appoint another *person* eligible to be the *depositary* in its place.

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

**Application**

6.6.1 R This section applies in accordance with *COLL* 6.6.2R (Table of application).

**Table of application**

6.6.2 R This table belongs to *COLL* 6.6.1R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors of</i> an <i>ICVC</i>	<i>Depositary of</i> an <i>ICVC</i>	<i>Manager</i> of an <i>AUT</i>	<i>Trustee</i> of an <i>AUT</i>
6.6.1R	x	x	x	x	x	x
6.6.3R	x	x		x	x	x
6.6.4R				x		x
6.6.5R		x	x	x	x	x
6.6.6R		x			x	
6.6.7R	x	x				
6.6.8R					x	x
6.6.9R					x	x
6.6.10R		x		x	x	x
6.6.11G				x		x
6.6.12R				x		x
6.6.13R		x	x	x	x	x
6.6.14R		x		x	x	x
6.6.15R	x	x	x	x	x	x
6.6.16G		x		x	x	x
6.6.17R		x	x	x	x	x
6.6.18G		x	x	x	x	x
Note: "x" means "applies", but not every paragraph in every <i>rule</i> will necessarily apply.						

### Functions of the authorised fund manager

- 6.6.3 R (1) The *authorised fund manager* must manage the *scheme* in accordance with:
- (a) the *instrument constituting the scheme*;
  - (b) the *rules* in this sourcebook;
  - (c) the most recently published *prospectus*; and
  - (d) for an *ICVC*, the *OEIC Regulations*.
- (2) The *authorised fund manager* must take such steps as necessary to ensure compliance with the *rules* in this sourcebook that impose obligations upon the *ICVC*.
- (3) The *authorised fund manager* must:
- (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
  - (b) instruct the *depository* in writing how rights attaching to the ownership of the *scheme property* are to be exercised, but not where *COLL* 6.6.13R(2) (Exercise of rights in respect of the scheme property) applies; and
  - (c) take action immediately to rectify any breach of *COLL* 6.3 and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue* of *units*, the rectification must, (unless the *depository* otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:
    - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
    - (ii) by the *ACD* to the *ICVC*;
    - (iii) by the *ICVC* to the *ACD*;
    - (iv) by the *manager* to the *trustee*; or
    - (v) by the *trustee* (for the account of the *AUT*) to the *manager*.

- (4) Rectification under (3)(c) need not, unless the *depository* so directs, extend to any such reimbursement or payment where it appears to the *depository* such breach, is of minimal significance.

**General duties of the depository**

- 6.6.4 R (1) The *depository* of an *authorised fund* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
- (a) *COLL 5* (Investment and borrowing powers);
  - (b) *COLL 6.2* (Dealing);
  - (c) *COLL 6.3* (Valuation and pricing);
  - (d) *COLL 6.8* (Income: accounting, allocation and distribution); and
  - (e) any provision of the *instrument constituting the scheme* or *prospectus* that relates to the provisions referred to in (a) to (d).
- (2) The *depository* must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:
- (a) the *authorised fund manager* is adopting appropriate procedures to ensure that the *price* of a *unit* is calculated for each *valuation point* in accordance with *COLL 6.3*; and
  - (b) the *authorised fund manager* has maintained sufficient records to show compliance with *COLL 6.3*.
- (3) The *depository*, when acting in its capacity as *depository*, must act solely in the interests of the *unitholders*.
- (4) The *depository*:
- (a) must also take reasonable care to ensure that;
    - (i) the *authorised fund manager* considers whether or not to exercise the power provided by *COLL 6.3.7R* (SDRT provision) or *COLL 6.3.8R* (Dilution) (as the case may be) and, if applicable, the rate or amount of any *SDRT provision, dilution levy* or

- dilution adjustment* that is imposed;
  - (ii) the *authorised fund manager* has in relation to (i), taken account of all factors that are material and relevant to the *authorised fund manager's* decision; and
  - (iii) when the *authorised fund manager* considers whether or not to exercise the power under *COLL 6.3.8R*, the *authorised fund manager* has acted in accordance with the restrictions imposed by that *rule*; and
- (b) has no duty in respect of the *authorised fund manager's* exercise of the discretion referred to in (a).

**Duties of the authorised fund manager and the depositary under the general law**

- 6.6.5 R (1) The duties and powers of the *authorised fund manager*, the *directors* of an *ICVC* and the *depositary* under the *rules* in this sourcebook and under the *instrument constituting the scheme* are in addition to the powers and duties under the general law.
- (2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the *rules* in this sourcebook or the *instrument constituting the scheme* or the *OEIC Regulations*.

**Maintenance of records**

- 6.6.6 R (1) The *authorised fund manager* must make and retain for six years such records as enable:
- (a) the *scheme* and the *authorised fund manager* to comply with the *rules* in this sourcebook and the *OEIC Regulations*; and
  - (b) it to demonstrate at any time that such compliance has been achieved.
- (2) The *authorised fund manager* must make and retain for six years a daily record of the *units* in the *scheme* held, acquired or disposed of by the *authorised fund manager*, including the

*classes* of such *units*, and of the balance of any acquisitions and disposals.

- (3) Where relevant, an *authorised fund manager* must make and retain for a period of six years a daily record of:
  - (a) how it calculates and estimates *dilution*; and
  - (b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.
- (4) The *authorised fund manager* must on the request of the *depository* immediately supply it with such information concerning the management and administration of the *authorised fund* as the *depository* may reasonably require.

**Maintenance of capital: notification**

- 6.6.7 R The *ACD* must immediately notify the *FSA* in writing if the *ICVC's* capital falls below the minimum or exceeds the maximum stated in the *instrument of incorporation*.

**Auditor: AUTs**

- 6.6.8 R (1) The *manager* of an *AUT* must, upon any vacancy for the position of auditor for an *AUT*, with the approval of the *trustee*, appoint as auditor for the *AUT* a *person* qualified for appointment as auditor of an *authorised person*.
- (2) The audit fees of the auditor are determined by the *manager* with the approval of the *trustee*.
- (3) The *manager* of an *AUT* may, with the approval of the *trustee*, at any time, remove the auditor of an *AUT*; this power exists notwithstanding anything in any agreement between the *persons* concerned.

**Returns: AUTs**

- 6.6.9 R The *manager* of an *AUT* must prepare and supply to the *trustee* the returns required to be submitted by the *trustee* to the Board of Inland Revenue.

**Dealings in scheme property**

- 6.6.10 R (1) The *authorised fund manager* may give instructions to deal in the property of the *scheme*.

- (2) The *authorised fund manager* must obtain the consent of the *depository* for the acquisition or disposal of immovable property.
- (3) Where the *depository* is of the opinion that a deal in property is not within the *rules* in this sourcebook and the *instrument constituting the scheme*, the *depository* may require the *authorised fund manager* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
- (4) Where the *depository* is of the opinion that:
  - (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a *person* other than the *depository*; and
  - (b) the *depository* cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other *person*;
 the *authorised fund manager* must, if the *depository* so requests, either cancel the transaction or make a corresponding disposal.

#### **Duty to inform the FSA**

- 6.6.11 G *SUP* 15.3 (General notification requirements) contains *rules* and *guidance* on matters that should be notified to the *FSA*. Such matters include, but are not limited to, any circumstance that the *depository* becomes aware of whilst undertaking its functions or duties in *COLL* 6.6.4 (General duties of the depository) that the *FSA* would reasonably view as significant.

#### **Control by the depository over the scheme property**

- 6.6.12 R (1) The *depository* of an *authorised fund* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:
- (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the *scheme*;



- (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depository*, its nominee or a *person* retained by it under COLL 6.6.15R (Committees and delegation);
  - (c) take into its *custody* or under its control documents of title to the *scheme property* other than for transactions in *derivatives* or forward transactions; and
  - (d) ensure that any transaction in *derivatives* or a forward transaction is entered into so as to ensure that any resulting benefit is received by the *depository*.
- (2) The *depository* is responsible for the collection of income due to be paid for the account of the *authorised fund*.
  - (3) The *depository* must keep for six years such records as are necessary:
    - (a) to enable it to comply with the *rules* in this sourcebook; and
    - (b) to demonstrate that it has achieved such compliance.

**Exercise of rights in respect of the scheme property**

- 6.6.13 R (1) The *depository* must take all necessary steps to ensure that instructions given to it by the *authorised fund manager* for the exercise of rights attaching to the ownership of *scheme property* are carried out.
- (2) Where the *scheme property* of an *authorised fund* contains *units* in any other *scheme* managed or otherwise operated by the *manager* of the *AUT* or, as the case may be, by any *director* of the *ICVC* or by any *associate* of either, the *depository* must exercise any voting rights associated with those *units* in accordance with what he reasonably believes to be the interests of the *unitholders* in the *authorised fund*.

**Duties of the depository and the authorised fund manager: investment and borrowing powers**

- 6.6.14 R (1) The *authorised fund manager* must avoid the *scheme property* being used or invested contrary to *COLL 5*, or any provision in the *instrument constituting the scheme* or the *prospectus* as referred to in *COLL 5.2.4R* (Investment powers:general), except to the extent permitted by (3)(b).
- (2) The *authorised fund manager* must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).
- (3) The *authorised fund manager* must restore compliance with *COLL 5* as soon as reasonably practicable having regard to the interests of the *unitholders* and, in any event, within the period specified in (5) or, when applicable, (6) where:
- (a) the *scheme property* is:
- (i) used or invested contrary to *COLL 5* (other than a provision excusing a failure to comply on a temporary basis); and
  - (ii) the contravention is beyond the control of both the *authorised fund manager* and the *depository*; or
- (b) there is a transaction (“subsequent transaction”) deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an *investment* (‘original *investment*’) of the scheme if:
- (i) the subsequent transaction, but for this *rule* would constitute a breach of *COLL 5*; and
  - (ii) at the time of the acquisition of the original *investment*, it was reasonable for the *authorised fund manager*, to expect that a breach would not be caused by the subsequent transaction; and
- in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the *depository* or the *authorised fund manager*.

- (4) Immediately upon the *depository* becoming aware of any breach of any provision listed in (1), it must ensure that the *authorised fund manager* complies with (2).
- (5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):
  - (a) for six *months*; or
  - (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under *COLL 5.2.20R* (Permitted transactions (derivatives and forwards)) or *COLL 5.6.13R* (Permitted transactions (derivatives and forwards)), until the close of business five *business days* later; or
  - (c) where the transaction relates to an immovable, for two years.
- (6) The period specified at (5)(b) is extended where:
  - (a) the transaction involved a delivery of a *commodity*, from five to twenty *business days*;
  - (b) the reason for the contravention in (3)(a) is the inability of the *authorised fund manager* to *close out* a transaction because of a limit in the number or value of transactions imposed by an *eligible derivatives* market, until five *business days* after:
    - (i) the inability resulting from any such limit is removed; or
    - (ii) it becomes, to the knowledge of the *authorised fund manager*, reasonably practicable and reasonably prudent for the transaction to be *closed out* in some other way.

#### **Committees and delegation**

- 6.6.15 R (1) The *directors* of an *ICVC* may delegate to any one or more of their number any of the *directors'* powers or duties but remain responsible for the acts or omissions of any such *directors*.

- (2) The *authorised fund manager* of a *scheme* and the *directors* of an *ICVC* have the power to retain the services of anyone to assist in the performance of their respective functions, provided that:
- (a) a mandate in relation to *managing investments* of the *scheme property* is not given to:
    - (i) the *depository*; or
    - (ii) any other *person* whose interests may conflict with those of the *authorised fund manager* or the *unitholders*; or
    - (iii) any other *person* who is not both:
      - (A) authorised or registered for *managing of investments*; and
      - (B) subject to prudential supervision; unless there is an agreement in place between the *FSA* and the *overseas regulator* of the delegate ensuring adequate co-operation;
  - (b) the *authorised fund manager* ensures that at all times it can monitor effectively the relevant activities of any *person* so retained;
  - (c) the mandate permits the *authorised fund manager* to:
    - (i) give further relevant instructions to the *person* so retained; and
    - (ii) withdraw the mandate with immediate effect when this is in the interests of the *unitholders*; and
  - (d) the mandate does not prevent effective supervision of the *authorised fund manager* and it must not prevent the *authorised fund manager* from acting, or the *scheme* from being managed in the best interests of the *unitholders*.
- (3) Subject to the provisions of the *OEIC Regulations* and to (1), where services are retained under (2), the responsibility which the *authorised fund manager* had in respect of such services prior to that retention of services will remain unaffected.

- (4) The *depository of a scheme* may delegate any function to any *person* save:
- (a) the *ICVC* or any *director* of the *ICVC* or the *authorised fund manager* of a *scheme*, to assist the *depository* to perform:
    - (i) any function of oversight in respect of the *scheme*, its *directors* or the *authorised fund manager* as the case may be; or
    - (ii) any function of *custody* or control of the *scheme property*;
  - (b) an *associate* of the *ICVC* or of any of the *directors* of the *ICVC* or of the *authorised fund manager* of the *scheme* (as the case may be) to assist the *depository* to perform any function in (a)(i); or
  - (c) a *nominee company* or anyone else to assist it to perform the function of being a *custodian* of *documents* evidencing title to *scheme property* of the *scheme* unless the arrangements with the *custodian* prohibit the *custodian* from releasing the *documents* into the possession of a third party without the consent of the *depository*.
- (5) Where a *depository* retains services under (4):
- (a) if it retains the services of a *director* of the *ICVC*, or an *associate* or such a *director* or its own *associate*, then its liability for those services shall remain unaffected; and
  - (b) in any other case, it will not be held responsible by virtue of the *rules* in *COLL* for any act or omission of the *person* so retained if it can show that:
    - (i) it was reasonable for it to obtain assistance to perform the function in question;
    - (ii) the *person* retained was and remained competent to provide assistance in the performance of the function in question; and

- (iii) it had taken reasonable care to ensure that the assistance in question was provided by the *person* retained in a competent manner.
- (6) Where *COLL* 6.5.5R(4) (Other directors) applies, the *directors* have, in respect of the functions of the *ACD* under *COLL* 6.6.3R (Functions of the authorised fund manager), the same rights and responsibilities as for an *ACD* under this *rule*.

**Delegation: guidance**

- 6.6.16 G (1) *SYSC* 3.2 (Areas covered by systems and controls) contains *guidance* relating to delegation, including external delegation. *SYSC* 3.2.4G(1) states that a *firm* cannot contract out of its regulatory obligations.
- (2) *SUP* 15.8.6R (Delegation by UCITS management companies) requires an *authorised fund manager* of a *UCITS scheme* to inform the *FSA* where one of its duties is delegated to another *person*.

**Conflicts of interest**

- 6.6.17 R (1) The *authorised fund manager*, any other *director* of an *ICVC* and the *depository* must take reasonable care to ensure that a transaction within (a) to (f) is not carried out on behalf of the *scheme*:
- (a) putting cash on *deposit* with an *affected person* unless that *person* is an *eligible institution* or an *approved bank* and the arm's length requirement in (2) is satisfied;
  - (b) lending *money* by an *affected person* to, or for the account of, the *scheme*, unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's length requirement in (2) is satisfied;
  - (c) the dealing in property by an *affected person*, to, or with, the *scheme* (or the *depository* for the account of the *scheme*), unless (3) applies;
  - (d) the vesting of property (other than cash) by an *affected person* in the *scheme* or the *depository* for the account of

the *scheme* against the *issue* of *units* in the *scheme*,  
unless:

- (i) (3) applies; or
  - (ii) the purpose of the vesting is that the whole or part of the property of a *body corporate* or a *collective investment scheme* becomes the first property of the *scheme* and the *unitholders* of *shares* or *units* in the *body corporate* or *collective investment scheme* become the first *unitholders* in the *scheme*;
- (e) the *acquisition* of *scheme property* by an *affected person* from the *scheme* (or the *depository* acting for the account of the *scheme*), unless *COLL 6.2.15R* (In specie issue and cancellation) applies, or unless (3) applies; and
- (f) transactions within *COLL 5.4* (Stock lending) by an *affected person* with, or in relation to, the *scheme* unless the arm's length requirement in (2) is satisfied.
- (2) Any transaction in (1)(a),(b) or (f) must be at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length between the *affected person* and an independent party.
- (3) There is no breach of (1)(c), (d) or (e) if the transaction meets the requirements of (4) (best execution *on-exchange*), (5) (independent valuation) or (6) (arm's length transaction).
- (4) There is best execution *on-exchange* for the purposes of (3) if:
- (a) the property is an *approved security* or an *approved derivative*;
  - (b) the transaction is effected under the rules of the relevant exchange with or through a *person* who is bound by those rules;
  - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
  - (d) the *authorised fund manager* has taken all reasonable steps to ensure that the transaction is effected on the terms

which are the best available for the *scheme*.

- (5) There is independent valuation for the purposes of (3) if:
  - (a) the value of the property is certified in writing for the purpose of the transaction by a *person* approved by the *depository* as:
    - (i) independent of any *affected person*; and
    - (ii) qualified to value property of the relevant kind; and
  - (b) the *depository* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to *unitholders*.
- (6) There is an arm's length transaction for the purposes of (3) if:
  - (a) paragraph (4)(a) is not satisfied;
  - (b) it is not reasonably practicable to obtain an independent valuation under (5); and
  - (c) the *depository* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in (2).

**Conflicts of interest: guidance**

- 6.6.18 G (1) *COB 7.1* (Conflict of interest and material interest) applies for *scheme management activity* and contains *rules* on the fair treatment of *customers* where a *firm* has a conflict of interest in relation to a transaction. *COLL 6.6.17R* provides *rules* for specific circumstances where *COB 7.1* would not be appropriate for an *authorised fund*.
- (2) Regulation 44 of the *OEIC Regulations* (Invalidity of certain transactions involving directors) is relevant to the application of *COLL 6.6.17R*.



## 6.7 Payments

### Application

6.7.1 R This section applies in accordance with *COLL 6.7.2R* (Table of application).

### Table of application

6.7.2 R Table of Application. This table belongs to *COLL 6.7.1R*.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Depository of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
6.7.1R to 6.7.5G	x	x	x	x	x
6.7.6G	x	x		x	
6.7.7R		x		x	
6.7.8G		x		x	
6.7.9R		x		x	
6.7.10R		x	x	x	x
6.7.11G		x	x	x	x
6.7.12R	x	x		x	
6.7.13G	x	x		x	
6.7.14R	x				
6.7.15R	x	x	x	x	x
6.7.16G		x	x	x	x
6.7.17R	x	x		x	

Note: "x" means "applies", but not every paragraph in every *rule* will necessarily apply.

### Purpose

- 6.7.3 G (1) This section assists in securing the *regulatory objective* of protecting *consumers* through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.
- (2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for *unitholders* of any increases in charges and payments to the *authorised fund manager*.
- (3) The *prospectus* should make adequate provision for payments from an *authorised fund*. This section:
- (a) prohibits, or stipulates the conditions on which, the payments out of the *scheme property* can be made;

- (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
- (c) governs the allocation of payments between capital and income.

**Payments out of scheme property**

- 6.7.4 R (1) The only payments which may be recovered from the *scheme property* of an *authorised fund* are those in respect of:
- (a) remunerating the parties operating the *authorised fund*;
  - (b) the administration of the *authorised fund*; or
  - (c) the investment or safekeeping of the *scheme property*.
- (2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.

**Payments out of scheme property: guidance**

- 6.7.5 G (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with *COLL* 4.2.5R 13 and 14 (Table: contents of the prospectus).
- (2) An *authorised fund manager* should consider *COB* 5.6.3R (Charges to a private customer) in determining whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) *COLL* 6.7.4R(2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.

**Performance fees**

- 6.7.6 G (1) For the *authorised fund manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the value or *price* of property of any description or index or other factor designated for the purpose (a "performance fee").
- (2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with *COLL 6.7.4R*. In determining whether the performance fee is consistent the *authorised fund manager* should have regard to factors such as:
- (a) it should be calculated and paid after consideration of all other payments;
  - (b) where it is made on the basis of performance of the *authorised fund* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *authorised fund* and must be consistently applied;
  - (c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;
  - (d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
  - (e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and
  - (f) except where allowed by *COLL 6.7.4R*, there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.

- (3) In accordance with *COLL* 4.2.5R 13 (Table: contents of prospectus) the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

**Charges on buying and selling units**

- 6.7.7 R (1) No *person* other than the *authorised fund manager* may impose charges on *unitholders* or potential *unitholders* when they buy or sell *units*.
- (2) An *authorised fund manager* must not make any charge or levy in connection with:
- (a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be either a fixed amount or calculated as a percentage of the *price* of a *unit*; or
  - (b) the *redemption* or *cancellation* of *units*, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.
- (3) This rule is subject to *COLL* 6.3.7R (SDRT provision) and *COLL* 6.3.8R (Dilution).

**Charges on buying and selling units: guidance**

- 6.7.8 G (1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with *COLL* 4.2.5R (Table: contents of prospectus) and *COLL* 4.3 (Approvals and notifications).

- (2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.
- (3) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be *redeemed* or *cancelled* for the purpose of the imposition of the *redemption charge*.

#### **Charges for the exchange of units in an umbrella**

- 6.7.9 R For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

#### **Allocation of payments to income or capital**

- 6.7.10 R (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
- (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
  - (b) agree the treatment of any payment with the *depository*.
- (2) Where, for any *annual accounting period*, the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

### **Allocation of payments to income or capital: guidance**

- 6.7.11 G (1) Any payment as a result of effecting transactions for the *authorised fund* should be made from the *capital property* of the *scheme*.
- (2) Other than the payments in (1), all other payments should be made from *income property* in the first instance but may be transferred to the *capital account* in accordance with *COLL* 6.7.10R (Allocation of payments to income or capital).
- (3) For payments transferred to the *capital property* of the *scheme* in accordance with (2), the *prospectus* should disclose the matters in *COLL* 4.2.5R 14.
- (4) If the *authorised fund manager* wishes to make a change in relation to the allocation of payments, the procedures in *COLL* 4.3 (Approvals and notifications) will be relevant.

### **Prohibition on promotional payments**

- 6.7.12 R No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale* of *units* in an *authorised fund*.

### **Prohibition on promotional payments: guidance**

- 6.7.13 G Examples of payments which are not permitted by *COLL* 6.7.12R include:
- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
- (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than the preparation of *key features*); and
- (3) payments to third parties, for maintaining details of beneficial *unitholders*.

### **Movable or immovable property**

- 6.7.14 R An *ICVC* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

**Payment of liabilities on transfer of assets**

- 6.7.15 R (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue* of *units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.
- (2) The *ICVC*, its *depository* or the *trustee* of the *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
- (a) there is nothing in the *instrument constituting the scheme* of the *authorised fund* expressly forbidding the payment; and
  - (b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

**Exemptions from liability to account for profits**

- 6.7.16 G 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:
- (1) *dealings* in the *units* of a *scheme*; or
  - (2) any transaction in *scheme property*; or
  - (3) the supply of services to the *scheme*;
- where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

**Allocation of scheme property**

6.7.17 R For a *scheme* which is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only, must be allocated by the *authorised fund manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella* generally.



## 6.8 **Income: accounting, allocation and distribution**

### **Application**

- 6.8.1 R (1) This section applies to an *authorised fund manager*.
- (2) *COLL* 6.8.4 (Unclaimed, de minimis and joint unitholder distributions) also applies to the *depository* of an *authorised fund*.
- (3) Except in the case of *COLL* 6.8.2R (Accounting periods) and *COLL* 6.8.3R(1) (Income allocation and distribution), *COLL* 6.8 applies as if each *sub-fund* were a separate *authorised fund*.

### **Accounting periods**

- 6.8.2 R (1) An *authorised fund* must have:
- (a) an *annual accounting period*;
- (b) a *half-yearly accounting period*; and
- (c) an *accounting reference date*.
- (2) A *half-yearly accounting period* begins with the first *day* of an *annual accounting period* and ends on the *day* which is six *months* later or ends on some other reasonable date as set out in the *prospectus* of the *scheme*.

### **Income allocation and distribution**

- 6.8.3 R (1) An *authorised fund* must have an *annual income allocation date*, which must be within four *months* of the *accounting reference date*.
- (2) An *authorised fund* may have an *interim income allocation date* and *interim accounting periods* and, if it does, the *interim income allocation date* must be within four *months* of the end of the relevant *interim accounting period*.
- (3) An *authorised fund* must have a *distribution account* to which the *income property* is transferred at the end of the relevant accounting period.
- (4) If income is allocated and distributed during an accounting period:

- (a) with effect from the end of the relevant *accounting period*, the amount of income allocated to *unit classes* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes of units* are in *issue* during the period;
- (b) the adjustment in (a) must ensure the *price of units* remains unchanged despite the transfer of income; and
- (c) the amount of any interim distribution may not be more than the amount which, in the opinion of the *authorised fund manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

**Unclaimed, de minimis and joint unitholder distributions**

- 6.8.4 R (1) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.
- (2) The *authorised fund manager* and the *depository* may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
- (3) Distributions made to the first named joint *unitholder* on the *register* will be as effective a discharge to the *trustee and manager*, as if the first named joint *unitholder* had been a sole *unitholder*.

**Guidance: contents of the prospectus**

6.8.5 G *COLL* 4.2.5R (Table: contents of prospectus) requires the details of *COLL* 6.8.2R, *COLL* 6.8.3R(1) and (2) and *COLL* 6.8.4R(1) and (2) to be contained in the *prospectus* as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.

## 6.9 Independence, names and UCITS business restrictions

### Application

- 6.9.1 R This section applies to the *authorised fund manager* and the *depository* of an *authorised fund*.

### Independence of depositories and scheme operators

- 6.9.2 G (1) Regulation 15(8)(f) of the *OEIC Regulations* (Requirements for authorisation) requires independence between the *depository*, the *ICVC* and the *ICVC's directors*, as does section 243(4) of the *Act* (Authorisation orders) for the *trustee* and *manager* of an *AUT*. *COLL 6.9.3G* to *COLL 6.9.5G* give *FSA's* view of the meaning of independence of these relationships. An *ICVC*, its *directors and depository* or a *manager* and a *trustee* of an *AUT* are referred to as "relevant parties" in this *guidance*.
- (2) There are at least three possible kinds of links between the relevant parties:
- (a) *directors* in common;
  - (b) cross-shareholdings; and
  - (c) contractual commitments.
- (3) If any of these links exist between the relevant parties, the *FSA* will have regard to *COLL 6.9.3G* to *COLL 6.9.5G* in determining whether there is independence.

### Independence: influence by directors

- 6.9.3 G (1) Independence is likely to be lost if, by means of executive power, either relevant party could control the action of the other.
- (2) The board of one relevant party should not be able to exercise effective control of the board of another relevant party. Arrangements which might indicate this situation include quorum provisions and reservations of decision-making capacity of certain *directors*.

- (3) For an *AUT*, the *FSA* would interpret the concept of *directors* in common to include any *directors* of associates of one relevant party who are simultaneously *directors* of the other relevant party.
- (4) For an *ICVC*, independence would not be met if:
  - (a) a *director* of the *ICVC* or any *associate* of the *director* is a *director*, an employee, or both of the *depository*; or
  - (b) a *director* of an *ICVC*:
    - (i) has a direct or indirect shareholding for investment purposes of more than 0.5% of the votes at a general meeting or a meeting of *holders* of the class of *share* concerned of the *depository* of that *ICVC*; or
    - (ii) has any other relationship with the *depository* which might reasonably be expected to give rise to a potential conflict of interest.

**Independence: influence by shareholding**

- 6.9.4 G Independence is likely to be lost if either of the relevant parties could control the actions of the other by means of shareholders' votes. The *FSA* considers this would happen if any shareholding by one relevant party and their respective *associates* in the other exceeds 15% of the voting *share* capital, either in a single *share* class or several *share* classes. The *FSA* would be willing, however, to look at cross-shareholdings exceeding 15% on a case-by-case basis to consider if there were exceptional grounds for concluding that independence was safeguarded by other means.

**Independence: contractual commitments**

- 6.9.5 G The *FSA* would encourage relevant parties to consult it in advance about its view on the consequences of any intended contractual commitment or relationship which could affect independence, whether directly or indirectly.

**Undesirable or misleading names**

- 6.9.6 G (1) Regulation 15(9) of the *OEIC Regulations* and section 243(8) of the *Act* require that an *authorised fund's* name must not be

undesirable or misleading. This section contains *guidance* on some specific matters the *FSA* will consider in determining whether the name of an *authorised fund* is undesirable or misleading. It is in addition to the requirements of regulation 19 of the *OEIC Regulations* (Prohibition on certain names).

- (2) The *FSA* will take into account whether the name of the *scheme*:
  - (a) is substantially similar to the name of another *authorised fund*;
  - (b) implies that the *authorised fund* has merits which are not, or might not be, justified;
  - (c) implies that the *authorised fund manager* has particular qualities, which may not be justified;
  - (d) is inconsistent with the *authorised fund's* investment objectives or policy;
  - (e) implies that the *authorised fund* is not an *authorised fund* (for example, describing the *authorised fund* as a “plan” or “account” are unlikely to be acceptable); and
  - (f) might mislead investors into thinking that *persons* other than the *authorised fund manager* are responsible for the *authorised fund*.
- (3) The *FSA* is unlikely to approve a name of an *authorised fund* that includes the word "guaranteed" unless:
  - (a) the guarantee is given by:
    - (i) an *authorised person*;
    - (ii) a *person* authorised by a *Home State regulator*; or
    - (iii) a *person* subject to prudential supervision in accordance with criteria defined by Community law or prudential rules at least as stringent as those laid down by Community law;other than the *authorised fund manager* or the *depository*.
  - (b) the *authorised fund manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;

- (c) the guarantee covers all *unitholders* within the *authorised fund* and is legally enforceable by each *unitholder* who is intended to benefit from it or by a *person* acting on that *unitholder's* behalf;
  - (d) the guarantee relates to the total amount paid for a *unit* which includes any charge or other costs of buying or selling *units* in the *authorised fund*;
  - (e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and
  - (f) where the guarantee applies to different *classes* of *unit*, it is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes* of *unit*.
- (4) The name of an *authorised fund* may indicate a guaranteed capital return or income return or both but only if the total amount paid for a *unit* is guaranteed in accordance with (3).
- (5) The *FSA* is unlikely to approve a name of an *authorised fund* that includes words implying a degree of capital security (such as "capital protected" or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus*, and:
- (a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
  - (b) the investment objective and investment policy for the *authorised fund* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.
- (6) When determining whether (5) is complied with, the *FSA* will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a

case-by-case basis.

**Undesirable or misleading names: umbrellas**

- 6.9.7 R The *authorised fund manager* must ensure that the name of a *sub-fund* or of a *class* of *unit* is not undesirable or misleading.

**Undesirable or misleading names: umbrellas – guidance**

- 6.9.8 G When deciding whether *COLL* 6.9.7R is complied with, the *FSA* will take into account *COLL* 6.9.6G. *COLL* 6.9.7R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

**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;
  - (2) activities for the purposes of or in connection with those in (1);
  - (3) collective portfolio management, including without limitation:
    - (a) investment management;
    - (b) administration:
      - (i) legal and fund management accounting services;
      - (ii) *customer* enquiries;
      - (iii) valuation and pricing (including tax returns);
      - (iv) regulatory compliance monitoring;
      - (v) maintenance of *unitholder register*;
      - (vi) distribution of income;
      - (vii) *unit issues* and *redemptions*;
      - (viii) contract settlements (including certificate dispatch);and
    - (ix) record keeping; and
  - (c) marketing;



- (4) *managing investments* where the relevant portfolio includes one or more *ISD instruments*;
- (5) *advising on investments* where:
  - (a) the *firm* has a *permission* for the activity in (4); and
  - (b) each of the instruments are *ISD instruments*; and
- (6) safeguarding and administration of *collective investment scheme units* where the *firm* has a *permission* for the activity in (4).

**Connected activities: guidance**

- 6.9.10 G (1) Examples of the connected activities referred to in *COLL* 6.9.9R(2) include management of *group plans*, as long as they are dedicated to *investments* in *unit trust schemes* and *OEICs* for which the *firm* acts as an *authorised fund manager*.
- (2) The restrictions of business imposed by *COLL* 6.9.9R reflect the position under Article 5 of the *UCITS Directive*. In accordance with recital (7) of the amending UCITS Management Directive (2001/107/EC) the activities referred to at *COLL* 6.9.9R (3)(a) to (c) may be performed on behalf of *EEA UCITS management companies*.

**Notification to the FSA in its role as registrar of ICVCs**

- 6.9.11 R An *ICVC* must notify the *FSA* within 14 *days* of the occurrence of any of the following:
- (1) any amendment to the *instrument of incorporation*;
  - (2) any change in the address of the head office of the *ICVC*;
  - (3) any change of *director*;
  - (4) any change of *depository*;
  - (5) in respect of any *director* or *depository*, any change in the information mentioned in regulation 12(1)(b) or (c) of the *OEIC Regulations (Applications for authorisation)*;
  - (6) any change of the auditor of the *ICVC*;
  - (7) any order in respect of the *ICVC* made by virtue of regulation 70 of the *OEIC Regulations (Mergers and divisions)*.

## 7 Suspension of dealings and termination of authorised funds

### 7.1 Introduction

#### Application

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

#### Table of application

- 7.1.2 R This table belongs to *COLL 7.1.1R*.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depository of an ICVC</i>	<i>Manager</i>	<i>Trustee</i>
7.1.1	x	x	x	x	x	x
7.1.3	x	x	x	x	x	x
7.2.1	x	x		x	x	x
7.3.1	x	x	x	x		
7.3.2	x	x	x	x		
7.3.3	x	x	x			
7.3.4	x	x	x			
7.3.5		x	x			
7.3.6	x	x	x			
7.3.7	x	x	x	x		
7.3.8		x	x			
7.3.9		x				
7.3.10	x	x	x	x		
7.3.11		x				
7.3.12	x	x				
7.3.13 (1)		x	x			
7.3.13 (2)			x	x		
7.4					x	x
7.5		x	x	x	x	x
7.6		x	x	x	x	x
Note: x means "applies"						

## Purpose

- 7.1.3 G (1) This chapter helps to achieve the *regulatory objective* of protecting investors by ensuring they do not buy or *redeem units* at a *price* that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to value, or to dispose of and obtain payment for, all or some of the *scheme property* of an *authorised fund* or *sub-fund*. *COLL 7.2.1R* (Requirement) sets out the circumstances in which an *authorised fund manager* must or may suspend dealings in *units* and the manner in which a suspension takes effect.
- (2) This chapter also helps with the *regulatory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs* and *AUTs*. *ENF 16* (Collective investment schemes) deals with the *FSA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

## 7.2 Suspension and restart of dealings

### Requirement

- 7.2.1 R (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, suspend the *issue, cancellation, sale and redemption of units* in an *authorised fund* (referred to in this chapter as "*dealings in units*"), where due to exceptional circumstances it is in the interest of all the *unitholders* in the *authorised fund*.
- (2) On suspension, the *authorised fund manager*, or the *depository* if it has required the *authorised fund manager* to suspend *dealings in units*, must:
- (a) immediately inform the *FSA*, stating the reason for its action; and
  - (b) as soon as practicable give written confirmation of the suspension and the reasons for it to:
    - (i) the *FSA*; and
    - (ii) the *Home State regulator* in each *EEA State* in which the *authorised fund manager* holds itself out as willing to *sell* or *redeem units* of the *authorised fund* concerned.
- (3) During a suspension, none of the obligations in *COLL 6.2* (Dealing) and *COLL 6.3* (Valuation and pricing) apply.
- (4) The suspension of *dealings in units* must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased and, in any event, within 28 *days* of the commencement of the suspension.
- (5) The *authorised fund manager* must inform the *FSA* of the proposed restart of *dealings in units* and immediately after the restart must confirm this by giving notice to the *FSA* and the authorities mentioned in (2)(b)(ii).
- (6) The *authorised fund manager* may agree, during the suspension, to *deal in units* at a *price* calculated by reference to the first *valuation point* after restart of *dealings in units*, subject

- to (8).
- (7) This *rule* applies to a *sub-fund* as it applies to an *authorised fund*, and:
- (a) references to the *units* of the *class* or *classes* relate to that *sub-fund* and to the *scheme property* attributable to the *sub-fund*; and
  - (b) this *rule* can only apply to one or more *classes* of *units* without being applied to other *classes*, if it is in the interest of all the *unitholders*.
- (8) If an *authorised fund* operates *limited redemption arrangements*, and the event in (1) has affected a *valuation point*, the *authorised fund manager* must declare an additional *valuation point* as soon as possible after the restart of *dealings* in *units*.

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

#### Explanation of COLL 7.3

- 7.3.1 G (1) The winding up of an *ICVC* may be carried out under this section instead of by the court provided the *ICVC* is solvent and the steps required under regulation 21 the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the *ACD* and any other *directors* of the *ICVC*.
- (2) The termination of a *sub-fund* under this section will be subject to the conditions set out in regulation 21 of the *OEIC Regulations*. Termination can only commence once the proposed alterations to the *ICVC's instrument of incorporation* and *prospectus* have been notified to the *FSA* and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) A *sub-fund* or *ICVC* may also be terminated or wound up in connection with a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.

#### Special meanings for termination of a sub-fund of an ICVC

- 7.3.2 R In this section, where a *sub-fund* of an *ICVC* is being terminated, references to:
- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
  - (2) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
  - (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
  - (4) liabilities, are references to liabilities of the *ICVC* allocated or

attributable to the *sub-fund* to be terminated.

**Guidance on winding up or termination**

7.3.3 G This table belongs to *COLL 7.3.3G*.

<p>Summary of the main steps in winding up a solvent <i>ICVC</i> or terminating a <i>sub-fund</i> under <i>FSA rules</i>, assuming <i>FSA</i> approval.</p> <p>Notes: N = Notice to be given to the <i>FSA</i> under regulation 21 of <i>OEIC Regulations</i></p> <p>E = commencement of winding up or termination</p> <p>W/U = winding up</p> <p>FAP = final accounting period (<i>COLL 7.3.8R(4)</i>)</p>			
Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 <i>days</i>	7.3.5 (2)
2	Send audited solvency statement to the <i>FSA</i> with copy to <i>depository</i>	By N + 21 <i>days</i>	7.3.5 (4) and (5)
3	Receive the <i>FSA</i> approval	N + one <i>month</i>	Regulation 21 of <i>OEIC Regulations</i>
4	Normal business ceases; publish notices	E	7.3.6
5	Realise proceeds, wind up, instruct <i>depository</i> accordingly	ASAP after E	7.3.7
6	Prepare final account or termination account & have account audited	On completion of W/U or termination	7.3.8

7	Send final account or termination account and auditor's report to the <i>FSA &amp; unitholders</i>	Within 2 <i>months</i> of FAP	7.3.8(6)
8	Request <i>FSA</i> to revoke relevant <i>authorisation order</i>	On completion of W/U	7.3.7(9)

### **When an ICVC is to be wound up or a sub-fund terminated**

- 7.3.4 R (1) An *ICVC* must not be wound up except under this section or as an unregistered company under Part V of the Insolvency Act 1986.
- (2) An *ICVC* must not be wound up under this section if there is a vacancy in the position of *ACD*.
- (3) An *ICVC* must not be wound up or a *sub-fund* terminated under this section:
- (a) unless and until effect may be given, under regulation 21 of the *OEIC Regulations*, to proposals to wind up the affairs of the *ICVC* or to proposals to make the alterations to the *ICVC's instrument of incorporation* and *prospectus* that will be required if a *sub-fund* is terminated; and
- (b) unless a statement has been prepared and sent or delivered to the *FSA* under *COLL 7.3.5R* (Solvency statement) and received by the *FSA* prior to satisfaction of the condition in (a).
- (4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an *ICVC* or terminate a *sub-fund* under this section must be taken:
- (a) if an *extraordinary resolution* to that effect is passed; or
- (b) when the period (if any) fixed for the duration of the *ICVC* or the *sub-fund* by the *instrument of incorporation* expires or any event occurs, for which the *instrument of incorporation* provides that the *ICVC* or the *sub-fund* is to



- be wound up; or
- (c) on the date stated in any agreement by the *FSA* in response to a request from the *directors* for the winding up of the *ICVC* or a request for the termination of the *sub-fund*.

**Solvency statement**

- 7.3.5 R (1) Before notice is given to the *FSA* under regulation 21 of the *OEIC Regulations* of the proposals referred to in *COLL 7.3.4R* (3), the *directors* must make a full enquiry into the *ICVC's* affairs to determine whether the *ICVC* will be able to meet all its liabilities.
- (2) The *ACD* must then, based on the results of this enquiry, prepare a statement either:
- (a) confirming that the *ICVC* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
- (b) stating that such confirmation cannot be given.
- (3) This solvency statement must:
- (a) relate to the *ICVC's* affairs at a date no more than 28 *days* before the date on which notice is given to the *FSA*;
- (b) if there is more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD*; and
- (c) if it contains the confirmation under (2)(a), be signed by at least one other *director* or, if there is no *director* other than the *ACD*, be signed by the *ACD*.
- (4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the *OEIC Regulations* (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.
- (5) The solvency statement must be sent or delivered to the *FSA* and the *depository* no later than 21 *days* after notice is given to

the *FSA* in accordance with regulation 21 of the *OEIC Regulations*.

**Consequences of commencement of winding up or termination**

- 7.3.6 R (1) Winding up or termination must commence once the conditions referred to in *COLL 7.3.4 R (3)* are both satisfied or, if later, once the events in *COLL 7.3.4R(4)* have occurred.
- (2) Once winding up or termination has commenced:
- (a) *COLL 6.2 (Dealing)*, *COLL 6.3 (Valuation and pricing)* 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*;
  - (b) the *ICVC* must cease to *issue* and cancel *units*;
  - (c) the *ACD* must cease to *sell* or redeem *units* or to arrange for the *issue* or *cancellation* of units;
  - (d) no transfer of a *unit* may be registered and no other change to the *register* of *unitholders* may be made without the sanction of the *directors*;
  - (e) where winding up an *ICVC*, the *ICVC* must cease to carry on its business, except for its beneficial winding up; and
  - (f) the corporate status and corporate powers of the *ICVC* and (subject to the preceding provisions of this *rule*) the powers of the *directors* continue until the *ICVC* is dissolved.
- (3) The *ACD* must as soon as practicable after winding up or termination has commenced:
- (a) if the *ACD* has not previously notified *unitholders* of the proposal to wind up the *ICVC* or terminate the *sub-fund*, give written notice of the commencement of the winding up or termination to the *unitholders*; and
  - (b) if winding up an *ICVC*, publish notice of the commencement of the winding up (if the head office of the *ICVC* is situated in England and Wales or Wales) in the *London Gazette*, or (if the head office of the *ICVC* is

situated in Scotland) in the Edinburgh Gazette.

**Manner of winding up or termination**

- 7.3.7 R (1) Paragraphs (2) to (9) of this *rule* apply to winding up an *ICVC* and termination of a *sub-fund*, paragraph (10) only applies to the winding up of an *ICVC* and paragraphs (11) to (15) only apply to the termination of a *sub-fund* of an *ICVC*.
- (2) The *ACD* must, as soon as practicable after winding up or termination has commenced, cause the *scheme property* to be realised and the liabilities of the *ICVC* or the *sub-fund* to be met out of the proceeds.
- (3) The *ACD* must instruct the *depository* how such proceeds (until utilised to meet liabilities or make distributions to *unitholders*) must be held and those instructions must be prepared with a view to the prudent protection of creditors and *unitholders* against loss.
- (4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the *ICVC's* or the *sub-fund's* remaining liabilities, the *ACD* may arrange for the *depository* to make one or more interim distributions to the *unitholders* proportionately to the right of their respective *units* to participate in *scheme property* at the commencement of the winding up or termination.
- (5) On or before the date on which the final account is sent to *unitholders* in accordance with *COLL 7.3.8R* (Final account and termination account), the *ACD* must arrange for the *depository* to make a final distribution to the *unitholders*, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the *ICVC* or *sub-fund*).
- (6) Paragraphs (2) to (5) are subject to the terms of any *scheme of arrangement* sanctioned by an *extraordinary resolution* passed on or before the commencement of the winding up or

termination.

- (7) Where the *ICVC* and one or more *unitholders* (other than the *ACD*) agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the *scheme property* which is proportionate to the right to participate in *scheme property* of that or those *unitholders*.
- (8) In the case of (7), the *ACD* must cause the *ICVC* to distribute that part of the *scheme property* in specie to that or those *unitholders* in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the *ACD* appropriate to ensure that those *unitholders* bear the proportion of the liabilities and the expenses of the distribution attributable to their *units*.
- (9) The *depository* must notify the *FSA* once the winding up of the *ICVC* or the termination of a *sub-fund* (including compliance with *COLL 7.3.8R*) is complete and at the same time the *ACD* or the *depository* must request the *FSA* to revoke the relevant *authorisation order*.
- (10) Where any sum of *money* stands to the account of the *ICVC* at the date of its dissolution, the *ACD* must arrange for the *depository* to pay or lodge that sum within one *month* after that date in accordance with regulation 33(4) or (5) of the *OEIC Regulations* (Dissolution in other circumstances).
- (11) Where any sums (including unclaimed distributions) remain standing to the account of the *scheme property* following tender of payment (whether to a creditor or a *unitholder*), the *ACD* must instruct the *depository* to retain the sums ('tendered sums') in an account ('unclaimed payments account') separate from any other part of the *scheme property*.
- (12) The *depository* must, if instructed by the *ACD*, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum.

- (13) Any costs and reasonable expenses of the *ACD* for investigating a claim and any costs and expenses incurred by the *depository* in making a payment out of the unclaimed payments account may be reimbursed from the payment.
- (14) The *person* entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account and any interest arising in respect of the unclaimed payments account must be allocated between the continuing *sub-funds* of the *ICVC* in a manner which is fair to the *unitholders* of the *ICVC* generally.
- (15) Amounts standing to the credit of an unclaimed payments account must be excluded from the value of the *scheme property* and must not be subject to any distribution under this *rule*, but upon a dissolution of the *ICVC* under regulation 33 of the *OEIC Regulations*, the *depository* must cease to hold those amounts as part of that account and they will become subject to the provisions of (10).

**Final account and termination account**

- 7.3.8 R (1) Once the *ICVC's* affairs are fully wound up or termination of the *sub-fund* has been completed (including distribution or provision for distribution in accordance with *COLL 7.3.7 R(5)*), the *ACD* must prepare an account of the winding up or termination showing:
- (a) how it has been conducted; and
  - (b) how the *scheme property* has been disposed of.
- (2) The account in (1) must be, if there is:
- (a) more than one *director*, approved by the board of *directors* and be signed on their behalf by the *ACD* and at least one other *director*; or
  - (b) no *director* other than the *ACD*, signed by the *ACD*.
- (3) Once signed, this account is the "final account" for the purposes of the winding up of an *ICVC* and the "termination account" for the purposes of the termination of a *sub-fund*.

- (4) The final account must state the date on which the *ICVC's* affairs were fully wound up and the date stated must be regarded as the final *day* of the accounting period of the *ICVC* then running ('final accounting period').
- (5) The *ACD* must ensure that the *ICVC's* auditor makes a report in respect of the final account or termination account, which states the auditor's opinion whether the final account or termination account has been properly prepared for the purpose of (1).
- (6) Within two *months* of the date of the completion of the winding up of the *ICVC* or termination of the *sub-fund*, the *ACD* must send a copy of the final account or termination account and the auditor's report on it to the *FSA* and to each *person* who was a *unitholder* (or the first named of joint *unitholders*) immediately before its end.

**Duty to ascertain liabilities**

- 7.3.9 R (1) The *ACD* must use all reasonable endeavours to ensure that all the liabilities of the *ICVC* are discharged before the completion of the winding up or termination.
- (2) The duty in (1) relates to all liabilities of which the *ACD*:
- (a) is, or becomes, aware before the completion of the winding up or termination; or
  - (b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.
- (3) If the *ACD* rejects any claim against the *ICVC* in whole or part or against the *ICVC* in respect of a liability in whole or part, the *ACD* must immediately send to the claimant written notice of its reasons for doing so.

**Reports and accounts**

- 7.3.10 R (1) The *ACD* need not (as would be required under *COLL* 4.5.13R (Provision of short report)) send to each *unitholder* a copy of any short report relating to an *annual accounting period* or *half-yearly accounting period* which began after

commencement of winding up or termination, if the *directors* of the *ICVC*, after consulting the *FSA*, have reasonably determined that this is not required in the interest of *unitholders*.

- (2) Where (1) applies, a copy of the short or long report must be supplied free of charge to any *unitholder* upon request.

#### **Liabilities of the ACD**

- 7.3.11 R (1) Except to the extent that the *ACD* can show that it has complied with *COLL 7.3.9R* (Duty to ascertain liabilities), the *ACD*:
- (a) is personally liable to meet any liability of an *ICVC*, of which it is the *ACD*, wound up under this section (whether or not the *ICVC* has been dissolved); and
  - (b) must keep the *ICVC* indemnified against any liability allocated or attributable to a *sub-fund* that has been terminated under these *rules*;
- that was not discharged before the completion of the winding up or termination.
- (2) Where winding up an *ICVC*, if the proceeds of the realisation of the assets attributable, or allocated to a particular *sub-fund* of an *umbrella ICVC* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *ACD* must pay to the *ICVC*, for the account of that *sub-fund* the amount of the deficit, unless and to the extent that the *ACD* can show that the deficit did not arise as a result of any failure by the *ACD* to comply with the *rules* in *COLL*.
- (3) The liabilities of the *ACD* under this *rule* create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the *ICVC* in the circumstances described in (2)).
- (4) The obligations of the *ACD* under this *rule* do not affect any other obligation of the *ACD* under these *rules* or the general law.

### **Additional provisions applicable to umbrella companies**

- 7.3.12 R (1) Liabilities of an *ICVC* which is an *umbrella* attributable, or allocated, to a particular *sub-fund* must be met first out of the *scheme property* attributable or allocated to such *sub-fund*.
- (2) If the liabilities to be met out of a particular *sub-fund* of an *umbrella ICVC* are greater than the proceeds of the realisation of the *scheme property* attributable or allocated to that *sub-fund*, the deficit must be met out of the *scheme property* attributable or allocated to the solvent *sub-funds* of that *umbrella ICVC* in which the proceeds of realisation exceed liabilities and divided between those *sub-funds* in a manner that is fair to the *unitholders* in those solvent *sub-funds*.
- (3) Paragraph (2) applies in respect of any deficit arising as a result of additional liabilities accruing to a *sub-fund* through the operation of (2).
- (4) In calculating the amount of liabilities for the purpose of (2), account must be taken of any payments received or to be received from the *ACD* under *COLL 7.3.11R* (Liabilities of the *ACD*).

### **Miscellaneous**

- 7.3.13 R (1) If:
- (a) during the course, or as a result, of the enquiry referred to in *COLL 7.3.5R(1)* (Solvency statement), the *directors* become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that *rule*;  
or
- (b) after winding up or termination has commenced, the *ACD* becomes of the opinion that the *ICVC* will be unable to meet all its liabilities within twelve *months* of the date of the statement provided under (a) of *COLL 7.3.5R(2)*;  
the *directors* must immediately present a petition or cause the *ICVC* to present a petition for the winding up of the *ICVC* as an unregistered *ICVC* under Part V of the Insolvency Act 1986.



- (2) If, after the commencement of a winding up under this chapter and before notice of completion of the winding up has been sent to the *FSA*, there is a vacancy in the position of *ACD*, the *directors* of the *ICVC* must immediately present or cause the *ICVC* to present or, if there are no *directors*, the *depository* must immediately present, a petition for the winding up of the *ICVC* as an unregistered *ICVC* under Part V of the Insolvency Act 1986.

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

### Explanation of COLL 7.4

- 7.4.1 G (1) This section deals with the circumstances and manner in which an *AUT* is to be wound up or a *sub-fund* of an *AUT* is to be terminated. Under section 256 of the *Act* (Requests for revocation of authorisation order), the *manager* or *trustee* of an *AUT* may request the *FSA* to revoke the *authorisation order* in respect of that *AUT*. Section 257 of the *Act* (Directions) gives the *FSA* the power to make certain directions.
- (2) The termination of a *sub-fund* under this section will be subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the *trust deed* and *prospectus* have been notified to the *FSA* in writing and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) An *AUT* or a *sub-fund* of an *AUT* may also be wound up or terminated in connection with a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.

### Special meanings for termination of a sub-fund of an AUT

- 7.4.2 R In this section, where a *sub-fund* of an *AUT* is being terminated, references to:
- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (2) a resolution or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

- (4) liabilities, are references to liabilities of the *AUT* allocated or attributable to the *sub-fund* to be terminated.

**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 paragraph (2) and not otherwise:
- (a) *COLL 6.2* (Dealing), *COLL 6.3* (Valuation and pricing) and *COLL 5* (Investment and borrowing powers) cease to apply to the *AUT*;
  - (b) the *trustee* must cease to *issue* and cancel *units*;
  - (c) the *manager* must cease to *sell* and redeem *units*;
  - (d) the *manager* must cease to arrange the *issue* or *cancellation* of *units* under *COLL 6.2.7R* (Issue and cancellation of units through an authorised fund manager); and
  - (e) the *trustee* must proceed to wind up the *AUT* or terminate the *sub-fund* in accordance with *COLL 7.4.4.R*.
- (2) The events referred to in (1) are:
- (a) the *authorisation order* of the *AUT* is revoked;
  - (b) alterations to the *AUT's trust deed* and *prospectus* that will be required if the *sub-fund* is terminated taking effect in accordance with section 251 of the *Act*;
  - (c) the passing of an *extraordinary resolution* winding up the *AUT* or terminating the *sub-fund*, provided *FSA's* prior consent to the resolution has been obtained by the *manager* or *trustee*;
  - (d) in response to a request to the *FSA* by the *manager* or the *trustee* for the revocation of the *authorisation order*, the *FSA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *AUT*, the *FSA* will agree to that request;
  - (e) the expiration of any period specified in the *trust deed* as the period at the end of which the *AUT* is to be wound up

- or the *sub-fund* is to terminate;
  - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the *AUT* or *sub-fund* that is subject to the *scheme of arrangement* being left with no property; or
  - (g) the date on which a *relevant pension scheme* is notified in writing by the Occupational Pensions Schemes Regulatory Authority that the *scheme* is no longer registered under the Welfare and Pensions Reform Act 1999 as a *stakeholder pension scheme*.
- (3) This *rule* is without prejudice to *COLL 7.2.1R* (Requirement) and to any order or direction made under section 257 or 258 of the *Act*.

**Manner of winding up or termination**

- 7.4.4 R (1) Where *COLL 7.4.3R* (2)(f) applies, the *trustee* must wind up the *AUT* or terminate the *sub-fund* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within *COLL 7.4.3R*:
- (a) once the *AUT* falls to be wound up or *sub-fund* terminated, the *trustee* must realise the *scheme property*;
  - (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *trustee* must distribute the proceeds of that realisation to the *unitholders* and the *manager* proportionately to their respective interests in the *AUT* or *sub-fund* as at the date, or the date of the relevant event referred to in *COLL 7.4.3R*; and
  - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *trustee* after one year from the date on which they became payable must be paid by the *trustee* into court (or, in Scotland, as the court may direct), subject to the *trustee* having a right to retain any expenses properly incurred by him relating

to that payment.

- (3) For an *AUT* which is a *relevant pension scheme*, payments must not be made to *unitholders* in the *AUT*, the realisation proceeds having to be paid by the *trustee* in accordance with the *trust deed*.
- (4) Where the *trustee* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *trustee* may distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *trustee* for ensuring that, that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the events referred to in *COLL 7.4.3R* (2)(c), (d) or (e), the *trustee* must notify the *FSA* in writing and at the same time the *manager* or *trustee* must request the *FSA* to revoke the relevant *authorisation order*.

#### **Accounting and reports during winding up or termination**

- 7.4.5 R (1) For any *annual* or *half-yearly accounting period* which began after commencement of the winding up or termination, the *trustee* (after consulting the *manager* (if appropriate) and the *FSA*) may direct that *COLL 4.5.13R* (Provision of short report) may be dispensed with, provided that it has taken reasonable care to determine that the report is not required in the interests of the *unitholders*.
- (2) Where (1) applies, a copy of the short and long report must be supplied free of charge to any *unitholder* upon request.
  - (3) The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of this *rule*.
  - (4) At the conclusion of the winding up or termination, the

accounting period then running is regarded as the final *annual accounting period*.

- (5) Within two *months* after the end of the final *annual accounting period* or the termination of the *sub-fund*, the annual reports of the *manager* and *trustee* must be published and sent to the *FSA* and to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before its end.

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

### Explanation of this section

- 7.5.1 G (1) The *FSA* expects that the majority of requests it will receive for the winding up of an *authorised fund* (under regulation 21(1) of the *OEIC Regulations* or under section 256 of the *Act*) or termination of a *sub-fund* will be from *authorised fund managers* and *depositories* who consider that the *AUT*, *ICVC* or *sub-fund* in question is no longer commercially viable.
- (2) It is in *consumers'* interests to minimise, as far as possible, the period between which the *FSA* receives such requests and responds to them. To assist the *FSA* in arriving at a quick decision, based on all the relevant factors, it would be helpful for the *FSA* to receive the information listed at *COLL 7.5.2G*. Further information, however, may be requested by the *FSA* after receipt of the information, depending on the individual circumstances of the case.

### Information to be provided to the FSA

- 7.5.2 G The information referred to in *COLL 7.5.1G* is listed below:
- (1) the name of the *authorised fund* or *sub-fund*;
  - (2) the size of the *authorised fund* or *sub-fund*;
  - (3) the number of *unitholders*;
  - (4) whether dealing in *units* has been suspended;
  - (5) why the request is being made;
  - (6) what consideration has been given to the *authorised fund* or *sub-fund* entering into a *scheme of arrangement* with another *regulated collective investment scheme* and the reasons why a *scheme of arrangement* is not feasible;
  - (7)
    - (a) whether *unitholders* have been informed of the intention to seek termination, winding up or revocation; and
    - (b) if not, when they will be informed;
  - (8) details of any proposed preferential switching rights offered or to be offered to *unitholders*;
  - (9) details of any proposed rebate of charges to be made to

- unitholders* who recently purchased *units*;
- (10) where the costs of winding up or termination will fall;
  - (11) the *depository's*:
    - (a) statement whether having taken reasonable care it is certain that a *scheme of arrangement* is not feasible and explaining what steps have been considered that would result in the *authorised fund* or *sub-fund* not needing to wind up or terminate (for example, appointing a replacement *authorised fund manager*); and
    - (b) confirmation that it will not or does not expect to qualify a report made in accordance with *COLL 4.5.11R* (Report of the depository);
  - (12) the preferred date for the *FSA's* determination to revoke authorisation or the date for the commencement of the winding up or termination; and
  - (13) any additional information or material considered to be relevant to the *FSA's* decision under sections 251 and 256 of the *Act* or regulation 21 of the *OEIC Regulations* (as appropriate).



## 7.6 Schemes of arrangement

### Schemes of arrangement: explanation

- 7.6.1 G (1) A proposal that an *authorised fund* should be involved in a *scheme of arrangement* is subject to written notice to and approval by the *FSA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company). Effect cannot be given to such a change except in accordance with that section or regulation.
- (2) The *issue* of *units* in exchange for assets as part of an approved *scheme of arrangement* is subject to:
- (a) *COLL 6.2.5R* and *COLL 6.2.6R* (Issue and cancellation of units);
  - (b) *COLL 6.2.15R* (In specie issue and redemption); and
  - (c) *COLL 7.6.2R* (Scheme of arrangement: requirements).

### Schemes of arrangement: requirements

- 7.6.2 R (1) If a *scheme of arrangement* is entered into in relation to an *authorised fund* ("transferor fund") or a *sub-fund* of a *scheme* which is an *umbrella* ("transferor *sub-fund*"), an *authorised fund manager* must ensure that the *unitholders* of the transferor fund or *sub-fund* do not become *unitholders* of *units* in a *collective investment scheme* other than a *regulated collective investment scheme*.
- (2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* also excludes any *recognised scheme* other than a *scheme* recognised under section 264 of the *Act* (Schemes constituted in other EEA States).
- (3) Where, for the purpose of a *scheme of arrangement*, it is proposed that *scheme property* of an *authorised fund* should become the property of another *regulated collective investment scheme* or *sub-fund* of a *regulated collective investment*

*scheme*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund*, unless (4) applies.

- (4) Where, for the purposes of a *scheme of arrangement*, it is proposed that *scheme property* attributable to a *sub-fund* of an *umbrella* should become the property of another *regulated collective investment scheme* or of another *sub-fund* of a *regulated collective investment scheme* (whether or not of that *umbrella*), the proposal must not be implemented without the sanction of:
  - (a) an *extraordinary resolution* of the *unitholders* in the *sub-fund* of that *umbrella*; and
  - (b) (unless implementation of the *scheme of arrangement* is not likely to result in any material prejudice to the interests of the *unitholders* in any other *sub-fund* of that *umbrella*) an *extraordinary resolution* of the *unitholders* of *units* in that *umbrella*.
- (5) If it is proposed that an *authorised fund* or *sub-fund* of an *umbrella* should receive property (other than its first property) as a result of a *scheme of arrangement* (or an arrangement equivalent to a *scheme of arrangement*) which is entered into by some other *collective investment scheme* or *sub-fund*, or by a *body corporate*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund* or (as the case may be) of the *class* or *classes* of *units* related to the *sub-fund* unless (6) applies.
- (6) This paragraph (6) applies if the *directors* of the *ICVC* or the *manager* and *trustee* of the *AUT* agree that the receipt of the property concerned for the account of the *ICVC* or *AUT*:
  - (a) is not likely to result in any material prejudice to the interests of the *unitholders* of the *authorised fund*;
  - (b) is consistent with the objectives of the *authorised fund* or *sub-fund*; and

- (c) could be effected without any breach of a *rule* in *COLL 5*  
(Investment and borrowing powers).

## 8 Qualified investor schemes

### 8.1 Introduction

#### Application

8.1.1 R (1) This chapter applies to:

- (a) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (b) any other *director* of an *ICVC*;
- (c) a *depository* of an *AUT* or an *ICVC*; and
- (d) an *ICVC*,

which is a *qualified investor scheme*.

- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *qualified investor schemes*.

#### Purpose

8.1.2 G (1) This chapter assists in achieving the *regulatory objective* of protecting *consumers* by providing an appropriate degree of protection in respect of *authorised funds* that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in *retail schemes*.

- (2) This section ceases to apply where a *qualified investor scheme* has converted to be authorised as a *UCITS scheme* or a *non-UCITS retail scheme*.

#### Qualified investor schemes: eligible investors

8.1.3 R (1) The *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for the categories of *person* to whom it can be promoted under *COB 3 ANN5* (Permitted promotion of unregulated collective investment schemes and qualified investor schemes).

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

#### Qualified investor schemes – explanation

- 8.1.4 G (1) *Qualified investor schemes* are *authorised funds* which may only be sold or marketed to sophisticated investors. Therefore, the *authorised fund manager* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to the *client* types set out in COB 3 ANN5. COB 3.11.6R (Promotion of qualified investor schemes) also restricts promotion of *qualified investor schemes* to the categories of *person* set out in COB 3 ANN5.
- (2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for retail *schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

#### **Application and notification procedures**

- 8.1.5 G Details of the application procedures in respect of *qualified investor schemes* are contained in COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the FSA.

## 8.2 Constitution

### Application

- 8.2.1 R This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

### Classes of unit

- 8.2.2 R A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the scheme*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

### Names of schemes, sub-funds, and classes of units

- 8.2.3 R The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.

### Undesirable and misleading names

- 8.2.4 G *COLL 6.9.6G* (Undesirable or misleading names) contains *guidance* as to names which may be undesirable or misleading.

### Instrument constituting the scheme

- 8.2.5 R The statements and provisions required by *COLL 8.2.6R* must be included in the *instrument constituting the scheme* of a *qualified investor scheme*.

### Table: contents of the instrument constituting the scheme.

- 8.2.6 R This table belongs to *COLL 8.2.5R*.

#### 1 Description of the authorised fund

Information detailing:

- (1) the name of the *authorised fund*;
- (2) that the *authorised fund* is a *qualified investor scheme*; and
- (3) in the case of an *ICVC*, whether the head office of the *company* is situated in England and Wales or Wales or Scotland or Northern Ireland.

#### 2 Constitution

The following statements:

- (1) the *scheme property* of the *scheme* is entrusted to a *depository* for safekeeping (subject to any exception permitted by the *rules*);

- (2) if relevant, the duration of the *scheme* is limited and, if so, for how long;
- (3) charges and expenses of the *scheme* may be taken out of *scheme property*;
- (4) for an *ICVC*:
  - (a) what the maximum and minimum sizes of the *scheme's* capital are; and
  - (b) the *unitholders* are not liable for the debts of the *company*; and
- (5) for an *AUT*:
  - (a) the *trust deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
    - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
  - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
    - (i) the *scheme property* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
    - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with *COLL 8.5.15R*(Income);
  - (c) a *unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and
  - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*.

### 3 **Investment objectives**

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

### 4 **Units in the scheme**

A statement of:

- (1) the *classes* of *units* which the *scheme* may issue, indicating, for a *scheme* which is an *umbrella*, which *class* or *classes* may be issued in respect of each *sub-fund*; and
- (2) the rights attaching to *units* of each *class* (including any provisions for the expression in two denominations of such rights).

### 5 **Limitation on issue of and redemption of units**

Details as to:

- (1) the provisions relating to any restrictions on the right to redeem *units* in any *class*; and
- (2) the circumstances in which the issue of the *units* of any particular *class* may be limited.

### 6 **Income and distribution**

Details of the *person* responsible for the calculation, transfer, allocation and distribution of income for any *class* of *unit* in *issue* during the accounting period.

### 7 **Base currency**

A statement of the *base currency* of the *scheme*.

### 8 **Meetings**

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for *unitholders*.

### 9 **Powers and duties of the authorised fund manager and depositary**



Where relevant, details of any function to be undertaken by the *authorised fund manager* and *depository* which the *rules* in *COLL* require to be stated in the *instrument constituting the scheme*.

#### 10 **Termination and suspension**

Details of:

- (1) the grounds under which the *authorised fund manager* may initiate a suspension of the *scheme* and any associated procedures; and
- (2) the methodology for determining the rights of *unitholders* to participate in the *scheme property* on winding up.

#### 11 **Other relevant matters**

Details of those matters which enable the *scheme*, *authorised fund manager* or *depository* to obtain any privilege or power conferred by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the scheme*.

#### **Limited issue**

- 8.2.7 *Units* whose *issue* may be limited can only be issued if permitted by the *instrument*
- R *constituting the scheme*, under the conditions set out in the *prospectus* and provided that this will not materially prejudice any existing *unitholders* in the *scheme*.

### 8.3 Investor relations

#### Application

- 8.3.1 R This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* of a *qualified investor scheme*.

#### Drawing up and availability of prospectus

- 8.3.2 R (1) An *authorised fund manager* must ensure that a *prospectus* of a *qualified investor scheme* is drawn up which contains the information, specified in *COLL 8.3.4R* (Table: contents of qualified investor scheme prospectus), and the *authorised fund manager* must:
- (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
  - (b) include the date of any revision in a prominent manner in the revised *prospectus*, and
  - (c) send a copy of the original and any revised *prospectus* to the *FSA*.
- (2) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (3) An *ICVC* or the *manager* of an *AUT* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *qualified investor scheme* prior to the purchase of any *units*.

#### False or misleading prospectus

- 8.3.3 R The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

#### Table: contents of qualified investor scheme prospectus

- 8.3.4 R This table belongs to *COLL 8.3.2R*.

##### 1 Document status

A statement that this document is the *prospectus* of the *authorised fund* valid as at a particular date which shall be the date of the *document*.

##### 2 Description of the authorised fund

Information detailing:

- (1) the name of the *authorised fund*;
- (2) that the *authorised fund* is either an *ICVC* or an *AUT*;

- (3) that the *scheme* is a *qualified investor scheme*;
- (4) where relevant, that the *unitholders* in an *ICVC* are not liable for the debts of the *authorised fund*;
- (5) where relevant, the address of the *ICVC's* head office and the address in the *United Kingdom* for service on the *ICVC* of documents required or authorised to be served on it;
- (6) the effective date of the *authorisation order* made by the *FSA* and, if the duration of the *authorised fund* is not unlimited, when it will or may terminate;
- (7) the *base currency* for the *authorised fund*;
- (8) where relevant, the maximum and minimum sizes of the *ICVC's* capital; and
- (9) the circumstances in which the *authorised fund* may be wound up under the *rules* in *COLL* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up.

### 3 **Investment objectives and policy**

- (1) Sufficient information to enable a *unitholder* to ascertain:
  - (a) the investment objectives of the *authorised fund*;
  - (b) the *authorised fund's* investment policy for achieving those investment objectives, including:
    - (i) the general nature of the portfolio and any intended specialisation;
    - (ii) the policy for the spreading of risk in the *scheme property*; and
    - (iii) the policy in relation to the exercise of borrowing powers;
  - (c) a description of any restrictions in the assets in which investment may be made; and
  - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) For investment in immovables :
  - (a) the countries or territories of immovables in which the *authorised fund* may invest;
  - (b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and

(c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.

(3) If intended, whether the *scheme property* may consist of *units* in *collective investment schemes* ("second *schemes*") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as:

(a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and

(b) the extent to which any such charges will be reimbursed to the *scheme*.

(4) If intended, whether the *scheme* may enter into *stock lending* transactions and, if so, what procedures will operate and what *collateral* will be required.

#### 4 **Distributions and accounting dates**

Relevant details of accounting and distribution dates and a description of the procedures:

(1) for determining and applying income (including how any distributable income is paid); and

(2) relating to unclaimed distributions.

#### 5 **The characteristics of units in the authorised fund**

Information as to:

(1) the names of the *classes* of *units* in issue or available for *issue* and the rights attached to them in so far as they vary from the rights attached to other *classes*;

(2) how *unitholders* may exercise their voting rights and what these are; and

(3) the circumstances where a mandatory *redemption*, *cancellation* or conversion of *units* from one *class* to another may be required.

#### 6 **The authorised fund manager**

The following particulars of the *authorised fund manager*:

(1) its name and the nature of its corporate form;

(2) the country or territory of its incorporation;

(3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;

- (4) if it is a *subsidiary*, the name of its ultimate *holding company* and the country or territory in which that *holding company* is incorporated;
- (5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the *United Kingdom*;
- (6) the amount of its issued share capital and how much of it is paid up;
- (7) for an *ICVC*, a summary of the material provisions of the contract between the *ICVC* and the *authorised fund manager* which may be relevant to *unitholders* including provisions (if any) relating to termination, compensation on termination and indemnity; and
- (8) for an *AUT*, the names of the *directors* of the *manager*.

#### 7 **Directors of an ICVC, other than the ACD**

Other than for the *ACD*:

- (1) the names and positions in the *ICVC* of the *directors*; and
- (2) the manner, amount and calculation of the *remuneration* of the *directors*.

#### 8 **The depositary**

The following particulars of the *depositary*:

- (1) its name and the nature of its corporate form;
- (2) the country or territory of its incorporation;
- (3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and
- (4) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*.

#### 9 **The investment adviser**

If an *investment adviser* is retained in connection with the business of the *authorised fund*, its name and whether or not it is authorised by the *FSA*.

#### 10 **The auditor**

The name of the auditor of the *authorised fund*.

#### 11 **The register of unitholders**

Details of the address in the *United Kingdom* where the *register* of *unitholders* is kept and can be inspected by *unitholders*.

#### 12 **Payments out of the scheme property**

The payments that may be made out of the *scheme property* to any *person* whether by way of *remuneration* for services, or reimbursement of expense and for each category of *remuneration* or expense, the following should be specified:

- (1) the current rates or amounts of such *remuneration*;
- (2) how the *remuneration* will be calculated and accrue and when it will be paid;
- (3) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
  - (a) introduce a new category of *remuneration* for its services; or
  - (b) increase the basis of any current charge; or
  - (c) change the basis of the treatment of a payment from the *capital property* set out in *COLL 8.5.13R(2)(Payments)*;  
particulars of that introduction or increase and when it will take place;
- (4) the types of any other charges and expenses that may be taken out of the *scheme property*; and
- (5) if, in accordance with *COLL 8.5.13R(2)*, all or part of the *remuneration* or expense are to be treated as a capital charge:
  - (a) that fact; and
  - (b) the basis of the charge which may be so treated.

### 13 **Dealing**

Details of:

- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale* and *redemption* of *units*;
- (2) the procedures for effecting:
  - (a) the *issue* and *cancellation* of *units*;
  - (b) the *sale* and *redemption* of *units*; and
  - (c) the settlement of transactions;
- (3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in *COLL 8.5.11R(3)* (Sale and redemption) may be applied;
- (4) the circumstances in which the *redemption* of *units* may be suspended;

- (5) the *days* and times in the *day* on which recalculation of the *price* will commence;
- (6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
  - (a) any one *person* may hold; and
  - (b) may be the subject of any one transaction of *sale* or *redemption*;
- (7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption* of *units* in specie;
- (8) the circumstances in which the further *issue* of *units* in any particular *class* may be limited and the procedures relating to this; and
- (9) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *trustee* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*.

#### 14 **Valuation of scheme property**

Details as to:

- (1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a description of any circumstance where the *scheme property* may be specially valued;
- (2) in relation to each purpose for which the *scheme property* must be valued, the basis on which it will be valued; and
- (3) how the *price* of *units* of each *class* will be determined, including whether a forward or *historic price* basis is to be applied.

#### 15 **Sale and redemption charges**

If the *authorised fund manager* makes any charges on *sale* or *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

#### 16 **General information**

Details as to:

- (1) when annual and half- yearly reports will be published; and

- (2) the address at which copies of the *instrument constituting the scheme*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

#### 17 **Information on the umbrella**

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

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption and sale*;
- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*; and
- (5) for an *ICVC*, that the *sub-funds* are not “ring fenced” and in the event of an *umbrella* being unable to meet liabilities attributable to any particular *sub-fund* out of the assets attributable to that *sub-fund*, the remaining liabilities may have to be met out of the assets attributable to other *sub-funds*.

#### 18 **Application of the prospectus contents to an umbrella**

For a *scheme* which is an *umbrella*, information required must be stated:

- (1) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (2) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

#### 19 **Additional information**

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *manager* of an *AUT*, or which the *directors* or *manager* would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating.



### **Report and accounts**

- 8.3.5 (1) The *authorised fund manager* must prepare a report in respect of each *annual*  
R *accounting period* and *half-yearly accounting period*.
- (2) The first *annual accounting period* must begin:
- (a) on the first *day* of any period of *initial offer*; or
  - (b) in any other case, on the date of the relevant *authorisation order*.
- (3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.
- (4) The *authorised fund manager* must comply with the requirements of the *IMA SORP*.
- (5) The *authorised fund manager* must provide free of charge on the request of a purchaser of *units* a copy of the latest annual or half-yearly report before the conclusion of that sale.
- (6) The *authorised fund manager* must provide a copy of each annual and half-yearly report to the *FSA*.

### **Alterations to the scheme and notices to unitholders**

- 8.3.6 (1) Any proposed change which would be reasonably considered to be a  
R fundamental change to the *scheme* requires the prior sanction of an ordinary resolution of the *unitholders*.
- (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *unitholders* to become effective.
- (3) Alterations affecting only a particular *sub-fund* or *class* of *units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class* of *units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
- (4) This *rule* and *COLL* 8.3.8R (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class* of *units* rather than the *scheme* or *sub-fund* as a whole.

### **Alterations to the scheme and notices to unitholders: guidance**

8.3.7 Although account should be taken of the *guidance* on fundamental changes (*COLL*  
G 4.3.5G (Guidance on fundamental changes)) and significant changes (*COLL* 4.3.7G  
(Guidance on significant changes)) the impact of any change to the *scheme* should be  
assessed individually based on the nature of the *scheme* and its investor profile.

**Meetings**

- 8.3.8 (1) Details of the procedures for the convening and conducting of meetings and  
R resolutions must be set out in the *instrument constituting the scheme* and be  
reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all  
proceedings to which *COLL* 8.3.6R (Alterations to the scheme and notices to  
unitholders) and this *rule* are relevant.
- (3) The provisions in *COLL* 4.4.12R (Notices to unitholders), *COLL* 4.4.13R  
(Other notices) and *COLL* 4.4.14G (References to writing and electronic  
documents) apply in relation to *qualified investor schemes*.

## 8.4 Investment and borrowing powers

### Application

- 8.4.1 This section applies to an *ICVC* which is a *qualified investor scheme* and an  
R *authorised fund manager* and a *depository* of a *qualified investor scheme*.

### Spread of risk

- 8.4.2 An *authorised fund manager* must take reasonable steps to ensure that the *scheme*  
R *property* of a *qualified investor scheme* provides a spread of risk, taking into  
account the investment objectives and policy of the *scheme* as stated in the most  
recently published *prospectus*, and in particular, any investment objective as regards  
return to the *unitholders* (whether through capital appreciation or income or both).

### Investment powers: general

- 8.4.3 (1) The *scheme property* of a *qualified investor scheme* may, subject to the *rules*  
R in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the scheme* and the *prospectus* may further  
restrict:
- (a) the kinds of assets in which the *scheme property* may be invested;
  - (b) the types of transactions permitted and any relevant limits; and
  - (c) the borrowing powers of the *scheme*.

### Qualified investor schemes: general

- 8.4.4 The *scheme property* of a *qualified investor scheme* must, except where otherwise  
R provided by the *rules* in this chapter, consist only of one or more of the following to  
which it is *dedicated*:
- (1) any *specified investment*:
    - (a) within articles 74 to 86 of the *Regulated Activities Order*; and
    - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a *specified investment* within (a);
  - (2) an interest in an *approved immovable* under *COLL* 8.4.11R (Investment in property), provided the country or territory in which the land or building is situated is identified in the *prospectus*;

- (3) *precious metals*; or
- (4) a *commodity* contract traded on an *RIE* or a *recognised overseas investment exchange*.

**Investment in collective investment schemes**

8.4.5 A *qualified investor scheme* may invest in *units* in a *scheme* (a second *scheme*) only  
 R if the second *scheme* is:

- (1) a *regulated collective investment scheme*; or
- (2) a *scheme* not within (1) where the *authorised fund manager* has taken reasonable care to determine that:
  - (a) it is the subject of an independent annual audit conducted in accordance with international accounting standards;
  - (b) it has its value verified by a *person* independent from its *operator* in relation to each *day* on which dealing in that *scheme's units* may take place;
  - (c) there are mechanisms in place to enable *unitholders* to redeem their *units* within a reasonable time;
  - (d) it is prohibited from having more than 15% of its value in *units* of *schemes*; and
  - (e) it operates in accordance with the principle of risk spreading.

**Delivery of property under a transaction in derivatives or a commodities contract**

8.4.6 (1) An *authorised fund manager* must take reasonable care to determine the  
 R following when entering into any transaction in *derivatives* or any *commodity* contract which may result in any asset becoming part of the *scheme property*:

- (a) if it is an asset in which the *scheme property* could be invested, that the transaction:
  - (i) can be readily closed out; or
  - (ii) would at the expected time of delivery relate to an asset which could be included in the *scheme property* under the *rules* in this chapter; or
- (b) in any other case that the transaction can be readily closed out.

- (2) An *authorised fund manager* may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the *unitholders*, provided it has the consent of the *depository*.
- (3) Any asset within (1) acquired in accordance with (2) may form part of the *scheme property* despite any other *rule* in this chapter until the position can be rectified.

#### **Cover for transactions in derivatives and forward transactions**

- 8.4.7 (1) A transaction in *derivatives* or a forward transaction may be entered into only  
R if the maximum exposure, in terms of the *principal* or *notional principal* created by the transaction to which the *scheme* is or may be committed by another *person*, is covered globally under (2).
- (2) Exposure is globally covered if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure taking into account any reasonably foreseeable market movement.
  - (3) The total exposure relating to *derivatives* held in a *qualified investor scheme* may not exceed the net value of the *scheme property*.
  - (4) No element of cover may be used more than once.

#### **Continuing nature of limits and requirements**

- 8.4.8 (1) An *authorised fund manager* must, as frequently as necessary to ensure  
R compliance with *COLL* 8.4.7R(2) and (4), re-calculate the amount of cover required in respect of *derivatives* and forwards positions in existence under this chapter.
- (2) *Derivatives* and forwards positions may be retained in the *scheme property* only so long as they remain covered globally under *COLL* 8.4.7R.
  - (3) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's derivatives* positions and their contribution to the overall risk profile of the *scheme*.

#### **Permitted stock lending**

- 8.4.9 (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *trustee* at the  
R request of the *manager*, may enter into a *stock lending* arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).

- (2) The *depository* must ensure that the value of any *collateral*, for the *stock lending* arrangement is at all times at least equal to the value of the securities transferred by the *depository*.
- (3) In the case of the expiry of validity of any *collateral*, the duty in (2) is satisfied if the *depository* or the *authorised fund manager*, as appropriate, takes reasonable care to determine that sufficient *collateral* will be transferred by close of business on the *day* of expiry.

#### **General power to borrow**

- 8.4.10 R (1) The *ICVC* or *trustee* (on the instructions of the *manager*) may borrow money for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 100 % of the net value of the *scheme property* and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.
- (3) In this rule "borrowing" also includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.
- (4) Where the limit in (2) is breached, the *authorised fund manager* must take action in accordance with the principles set out in *COLL* 8.5.3R(3) to (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

#### **Investment in property**

- 8.4.11 R (1) Any investment in land or a building held within the *scheme property* of a *qualified investor scheme* must be in an immovable within (2).
- (2) For an immovable :
- (a) it must be situated in a country or territory identified in the *prospectus*;
  - (b) the *authorised fund manager* must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and
  - (c) the *manager* or the *ICVC* must have received a report from the *appropriate valuer* that:

- (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
  - (ii) states that in the *appropriate valuer's* opinion the interest in the immovable would if acquired by the *scheme*, be capable of being disposed of reasonably expeditiously at that valuation;
- (d) unless (c) is satisfied, the *manager* or the *ICVC* must have received a report from an *appropriate valuer* valuing the interest in the immovable and stating that:
- (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property*; and
  - (ii) in the opinion of the *appropriate valuer*, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and
- (e) it must not be bought:
- (i) if it becomes apparent to the *authorised fund manager* that the report in either (c) or (d) could no longer reasonably be relied upon; or
  - (ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).
- (3) Any contents of any building may be regarded as part of the relevant immovable.
- (4) An *appropriate valuer* must be a *person* who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
  - (b) is qualified to be a *standing independent valuer* of an *authorised fund* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
  - (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *manager* and *trustee* of the *AUT*; and
  - (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

### **Investment limits for immovables**

8.4.12 The following limits apply in respect of immovables held as part of the *scheme*  
R *property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under *COLL* 8.4.11(2)(c) or (d) or *COLL* 8.4.13R, as appropriate;
- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*. and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme* value in any 12 *month* period, calculated at the date of the granting of the option.

### **Standing independent valuer and valuation**

8.4.13 (1) In relation to the appointment of a valuer the *authorised fund manager* must:  
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- (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
  - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:
- (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
  - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
  - (c) the *authorised fund manager* must ensure that the *standing independent*



- valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
- (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
    - (i) affect the outcome of a valuation of an immovable; or
    - (ii) cause the valuer to decide to value under (a), instead of under (c), it must immediately inform the *standing independent valuer* of that matter;
  - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
  - (f) any valuation by the *standing independent valuer* must be on the basis of an 'Open Market value' as defined in the Royal Institute of Chartered Surveyors' Appraisal and Valuation Standards (Fifth Edition) ("Red Book") but is subject to any provisions of the *instrument constituting the scheme*.
- (3) In relation to immovables:
- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
  - (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

## 8.5 Powers and responsibilities

### Application

- 8.5.1 This section applies to an *ICVC* which is a *qualified investor scheme* and the  
R *authorised fund manager*, any other *directors* of an *ICVC* and the *depository* of a *qualified investor scheme*.

### Functions of the authorised fund manager

- 8.5.2 (1) The *authorised fund manager* must manage the *scheme* in accordance with:  
R
- (a) the *instrument constituting the scheme*;
  - (b) the *rules* in this sourcebook;
  - (c) the most recently published *prospectus*; and
  - (d) for an *ICVC*, the *OEIC Regulations*.
- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* in this sourcebook that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
- (3) The *authorised fund manager* must:
- (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
  - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
  - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
    - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
    - (ii) by the *ACD* to the *ICVC*;
    - (iii) by the *ICVC* to the *ACD*;
    - (iv) by the *manager* to the *trustee*; or
    - (v) by the *trustee* (for the account of the *AUT*) to the *manager*;
  - (d) ensure where relevant that the *ICVC* complies with the relevant

obligations imposed by, and when appropriate, exercises the relevant powers provided under, the *OEIC Regulations*;

- (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the *rules* in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
- (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the *classes* of such *units*, and of the balance of any acquisitions and disposals.

#### **Duties of the authorised fund manager: investment and borrowing powers**

- 8.5.3 (1) An *authorised fund manager* may give instructions to deal in the *scheme*  
R *property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in *COLL* 8.4 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of *COLL* 8.4 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

#### **Duties of the depository**

- 8.5.4 (1) The *depository* is responsible for the safekeeping of all the *scheme property*.  
R
- (2) The *depository* must:
- (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
  - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme*

- property* are carried out;
- (c) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;
  - (d) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions;
  - (e) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
  - (f) hold and deal with any income received in respect of *scheme property* in accordance with *COLL* 8.5.15R (Income);
  - (g) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
    - (i) *COLL* 8.4 (Investment and borrowing powers);
    - (ii) *COLL* 8.5.9R (Valuation, pricing and dealing); and
    - (iii) *COLL* 8.5.15R (Income);
  - (h) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
  - (i) be responsible for any other duties as set out in the *instrument constituting the scheme*.
- (3) If a relevant *ICVC* ceases to have any *directors*, the *depository* may act in accordance with *COLL* 6.5.6R (*ICVC* without a director).

### **Delegation**

- 8.5.5 (1) The *authorised fund manager* (or in addition any other *director* in the case of R an *ICVC*) may delegate any function to any *person*.
- (2) The *depository* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depository* to perform its functions, save that it must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.
- (3) Subject to any provisions of the *OEIC Regulations*, the delegator in (1) and (2) will not be responsible under the *rules* in *COLL* for any act or omission of the delegate provided that the delegator can show:

- (a) that it was reasonable for the delegator to obtain assistance to perform the function in question;
- (b) that the delegate was and remained competent to provide that assistance; and
- (c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

### **Delegation and responsibility for regulatory obligations**

8.5.6 SYSC 3.2 contains *guidance* relating to delegation including external delegation, and G SYSC 3.2.4(1) G states that a *firm* cannot contract out of its regulatory obligations.

### **Conflicts of interest**

- 8.5.7 (1) The *authorised fund manager and the depositary* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- R (2) Paragraph (1) is subject to any provision in the *instrument constituting the scheme* and the *prospectus* imposing a prohibition in relation to any type of transaction.

### **The register of unitholders: AUTs**

- 8.5.8 (1) The *manager* or the *trustee* (in accordance with their responsibilities as set out in the *instrument constituting the scheme*) must maintain a *register* of *unitholders* as a *document* in accordance with this *rule*.
- R (2) The *register* must contain:
- (a) the name and address of each *unitholder* (for joint *unitholders* no more than four need to be registered);
  - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
  - (c) the date on which the *unitholder* was registered in the *register* for the *units* standing in his name.
- (3) The *manager* or the *trustee* (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.

- (4) Where relevant, the *manager* must immediately notify the *trustee* of any information he receives which may affect the accuracy of any entry in the *register*.

### **Valuation, pricing and dealing**

- 8.5.9 R
- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
  - (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
  - (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
  - (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the scheme* and the *prospectus*, as appropriate.
  - (5) The *scheme* must have a *valuation point* on each *dealing day*.
  - (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
  - (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.
  - (8) Immediately after completing a valuation under (6), the *authorised fund manager* must notify the *depository* of:
    - (a) the price in the relevant currency of each type of *unit* as determined for the relevant *valuation point*; and
    - (b) the basis of any adjustment applied in relation to that *valuation point*.
  - (9) The *authorised fund manager* must publish in an appropriate manner the price of any type of *unit* based on the notification to the *depository* in (8)(a).
  - (10) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
  - (11) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

### **Issues and cancellations of units**

8.5.10 (1) The *authorised fund manager* must:

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- (a) ensure that at each *valuation point* there are at least as many *units* in issue of any *class* as there are *units* registered to *unitholders* of that *class*; and
  - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.
- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *trustee* to *issue* or *cancel units* where the *authorised fund manager* would otherwise be obliged to *sell* or *redeem* the *units* in the manner set out in the *prospectus*.
- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

### **Sale and redemption**

8.5.11 (1) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* to any eligible investor (within any conditions in the *instrument constituting the scheme* and the *prospectus* which must be fair and reasonable as between all *unitholders* and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such *sale*.

- (2) The *authorised fund manager* must, at all times during the *dealing day*, effect a *redemption* on the request of any eligible *unitholder* (within any conditions in the *instrument constituting the scheme* and the *prospectus*) of *units* owned by that *unitholder*, unless the *authorised fund manager* has reasonable grounds to refuse such *redemption*.
- (3) On agreeing to a *redemption* of *units* within (2), the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *instrument constituting the scheme* or the *prospectus*, unless it has reasonable grounds for withholding payment.
- (4) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which must be fair and reasonable as between redeeming *unitholders* and continuing *unitholders*.

#### **Limited redemption periods**

- 8.5.12 The maximum period between *dealing days* for a *qualified investor scheme* will  
 G depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the *scheme*. For instance, for a *scheme* aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between *dealing days* for liquidity reasons than for a *scheme* investing predominantly in listed *securities*.

#### **Payments**

- 8.5.13 (1) An *ICVC* must not incur any expense in respect of the use of any movable or  
 R immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

#### **Exemption from liability to account for profits**

- 8.5.14 An *affected person* is not liable to account to another *affected person* or to the  
 G *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:
- (1) *dealings* in the *units* of a *scheme*; or
  - (2) any transaction in *scheme property*; or
  - (3) the supply of services to the *scheme*;



where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

### **Income**

8.5.15 (1) A *qualified investor scheme* must have:

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- (a) an *annual accounting period*;
- (b) a *half-yearly accounting period*; and
- (c) an *accounting reference date*;

the details of which must be set out in the *prospectus*.

- (2) A *qualified investor scheme* must have an *annual income allocation date*, which must be within four months of the *accounting reference date*.
- (3) A *qualified investor scheme* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (4) A *qualified investor scheme* must have a *distribution account* where the *income property* is transferred at the end of the relevant accounting period.
- (5) If income is allocated and distributed during an accounting period:
  - (a) with effect from the end of the relevant accounting period, the amount of income allocated to *unit classes* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes units* are in *issue* during the period;
  - (b) the adjustment in (a) must ensure the *price* remains unchanged despite the transfer of income; and
  - (c) the amount of any interim distribution may not be more than the amount which, in the opinion of the *authorised fund manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

## 8.6 Termination, suspension, and schemes of arrangement

### Application

8.6.1 This section applies to:

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- (1) an *authorised fund manager*, the *directors*, and the *depository* of a *qualified investor scheme*; and
- (2) an *ICVC* which is a *qualified investor scheme*.

### Termination

8.6.2 For a *qualified investor scheme* the provisions in *COLL 7.3* to *COLL 7.5* will apply

R as appropriate as if *COLL 7* applied to *qualified investor schemes*.

### Suspension

- 8.6.3
- R
- (1) The *authorised fund manager* may within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, suspend *dealings* in *units* of the *scheme*, a *sub-fund* or a *class*.
  - (2) Any suspension within (1) must only be where the *authorised fund manager* has determined on reasonable grounds that there is good and sufficient reason in the interests of *unitholders* or potential *unitholders* and the *authorised fund manager* must have regard to the interests of all the *unitholders* in the *scheme* in reaching such an opinion.
  - (3) At the commencement of suspension under (1), the *authorised fund manager* must immediately inform the *FSA* of the suspension and the reasons for it.
  - (4) The suspension of *dealings* in *units* must cease within 28 *days* of its commencement or, if earlier, as soon as (2) no longer applies.
  - (5) The *authorised fund manager* must inform the *FSA* immediately of the resumption of *dealings*.

### Suspension

8.6.4 Under section 257 of the *Act* (Directions) the *FSA* may at its option extend the  
G suspension of *dealings* in *units* beyond 28 *days* of the commencement of suspension.

### Schemes of arrangement

8.6.5 In relation to an *ICVC* or an *AUT* which is a *qualified investor scheme*, the  
R provisions in *COLL 7.6* (Schemes of arrangement) will apply as appropriate to the  
*authorised fund manager*, any other *directors* of the *ICVC* and the *depository* as if  
*COLL 7.6* applied to a *qualified investor scheme* and did not exclude *unitholders*  
becoming *unitholders* in another *qualified investor scheme*.

## **9 Recognised schemes**

### **9.1 Application and general information**

#### **Application**

- 9.1.1 R This chapter applies to *operators of recognised schemes* and to *operators of schemes* making a notification in respect of them under Chapter V of Part XVII of the *Act* (Recognised overseas schemes).

#### **Purpose**

- 9.1.2 G This chapter enables potential *operators of recognised schemes* to know what information and *documents* the *FSA* wish to receive to enable it to consider whether to recognise the *scheme* under the *Act* for *marketing* in the *United Kingdom*.

#### **General information**

- 9.1.3 G Further information about notifications for recognition is contained in *COLLG*.

## 9.2 Section 264 recognised schemes

### Information and documents to be supplied with a section 264 notification

- 9.2.1 G (1) If the *operator* of a *collective investment scheme* constituted in a *EEA State* gives notice to the *FSA* under section 264 of the *Act*, it should include the information described in paragraphs (2) to (4) below (see the *Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001(SI 2001/2383)*, as amended).
- (2) The *documents* must be in English, or accompanied by a translation in English.
- (3) The *documents* should be certified by the *operator* to be true copies of the original.
- (4) The *FSA* will need the following information and documentation in connection with the notification:
- (a) the name of the *scheme*;
  - (b) the legal form of the *scheme*;
  - (c) the name and address of the *operator*;
  - (d) the address of the place in the *United Kingdom* for the service on the *operator* of notices or other *documents*;
  - (e) the name and address of any supervisory authority or authorities to which the *operator* is subject in the *EEA State* in which it is established;
  - (f) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;
  - (g) the name and address of the *depository*;
  - (h) the address in the *United Kingdom* where the *scheme* facilities (see *COLL 9.4*) will be maintained;
  - (i) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:
    - (i) the proposed commencement date;
    - (ii) whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;

- (j) the attestation or certificate from the authorities of the *EEA State* in which the *scheme* is authorised which demonstrates that the *scheme* complies with the *UCITS Directive*;
- (k) a copy of the *instrument constituting the scheme*;
- (l) a copy of the *prospectus* and the simplified prospectus of the *scheme*; and
- (m) a copy of the latest annual report and any subsequent half-yearly report.

### 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 *FSA* 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).
- (2) The *documents* must be in English or accompanied by a translation in English.
- (3) The *documents* must be certified by the *operator* to be true copies of the originals.
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the notification or application:
- (a) the name of the *scheme*;
  - (b) the legal form of the *scheme*;
  - (c) the name and address of the *operator*;
  - (d) the address of the place in the *United Kingdom* for service on the *operator* of notices or other *documents*;
  - (e) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;
  - (f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;
  - (g) the address of the place in the *United Kingdom* where *scheme* facilities (see *COLL* 9.4) will be maintained;
  - (h) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:
    - (i) the proposed commencement date;
    - (ii) whether the *units* will be sold by or through any

employed sales force, *authorised persons*, or unsolicited calls;

- (i) a copy of the *instrument constituting the scheme*;
- (j) a copy of the *prospectus* or any similar document giving details of the *scheme*;
- (k) a copy of the latest annual report and any subsequent half-yearly report;
- (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.

**Additional information required in the prospectus for an application under section 272**

- 9.3.2 R An *operator* of a *scheme* recognised under section 272 of the *Act* must ensure the *prospectus*:
- (1) contains a statement that “Complaints about the operation of the *scheme* may be made to the *FSA*.”; and
  - (2) states whether or not investors in the *scheme* would be covered by the *compensation scheme*, and if so, it must state how they are covered and who they would need to contact for further information.

**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 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*.
- (2) In this section, a facility is a place of business that complies with *COLL 9.4.6R* (Place of facilities).

### Documents

- 9.4.2 R (1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c) and (d), and otherwise at no more than a reasonable charge) of copies in English of:
- (a) the *instrument constituting the scheme*;
  - (b) any instrument amending the *instrument constituting the scheme*;
  - (c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);
  - (d) for a section 264 *recognised scheme*, the simplified prospectus; and
  - (e) the latest annual and half-yearly reports.
- (2) In relation to notices and *documents* sent by *operators* and *depositories* to and from the *United Kingdom*, *COLL 4.4.12R* (Notice to unitholders) and *COLL 4.4.13R* (Other notices) apply.

### Price and redemption

- 9.4.3 R (1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:
- (a) information in English can be obtained about prices of *units* in the *scheme*; and
  - (b) a *participant* may *redeem* or arrange for *redemption* of

*units* in the *scheme* and obtain payment.

- (2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

#### **Bearer certificates and characteristics of units in the scheme**

- 9.4.4 R (1) The *operator* must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge:
- (a) payment of dividends; and
  - (b) details or copies of any notices which have been given or sent to *participants* in the *scheme*.
- (2) The *operator* must state
- (a) the nature of the right represented by the *units* in the *scheme*; and
  - (b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are.

#### **Complaints**

- 9.4.5 R The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

#### **Place of facilities**

- 9.4.6 R (1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.
- (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).
- (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*.

## **10 Fees**

### **10.1 Introduction**

#### **Application**

- 10.1.1 R This chapter applies to:
- (1) every *person* seeking an *authorisation order* for, or recognition of, a *collective investment scheme*;
  - (2) every *manager* of an *authorised unit trust*;
  - (3) every *ACD* of an *ICVC*; and
  - (4) every *person* who, under the constitution or founding arrangements of a *recognised scheme*, is responsible for the management of the property held for or within the *scheme*.

#### **Purpose**

- 10.1.2 G The purpose of this chapter is to set out the requirements for the payment of fees relating to *collective investment schemes*.

#### **Background**

- 10.1.3 G *GEN 3* (FSA Fees – General Provisions) applies to fees required by this chapter and explains how the *FSA* sets fees.
- 10.1.4 G Most of the detail of the fees payable in relation to a *collective investment scheme* is set out in *COLL 10 Annex 1R*. The provisions of the Annex may vary from one financial year to another. Accordingly a fresh *COLL 10 Annex 1R* will come into force, following consultation, for each financial year.
- 10.1.5 G The fees for *collective investment schemes* reflect the estimated costs to the *FSA* of assessing applications and notifications, considering proposals to change *regulated collective investment schemes*, maintaining up to date records about them, and related policy work.
- 10.1.6 G The level of fees payable in respect of an application or notification will vary depending upon the provision of the *Act* under which it is made, as well as the type of *scheme* concerned. This fee is adjusted when the *scheme* concerned is an *umbrella scheme*.

## 10.2 Obligation to pay periodic fees

### General

- 10.2.1 R A *person* identified in COLL 10 Annex 1R as the relevant fee payer for a *regulated collective investment scheme* must pay each periodic fee applicable to it in full and without deduction.
- 10.2.2 G A relevant fee payer will be required to pay a periodic fee for every year during which a *regulated collective investment scheme* has that status. If that *person* is the relevant fee payer for more than one *regulated collective investment scheme*, he will be required to pay a fee in relation to each.

### Due date

- 10.2.3 R The relevant fee payer must pay the amount due on or before 30 April.

### Method of payment

- 10.2.4 R A periodic fee must be paid using one of the payment methods specified in SUP 20.2.7AR.

### Modifications for newly authorised or recognised schemes

- 10.2.5 R If an *authorisation order* is made in relation to a *scheme*, or a *scheme* becomes a *recognised collective investment scheme* during the course of a financial year to which a COLL 10 Annex 1R fee applies:
- (1) the periodic fee required under COLL 10.2 is modified in accordance with the table at COLL 10.2.6R; and
  - (2) the due date for payment is 30 *days* after:
    - (a) the making of the *authorisation order* for the *scheme*; or
    - (b) the *scheme* becomes *recognised*.
- 10.2.6 R Table. Modified fees for newly authorised or recognised schemes  
This table belongs to COLL 10.2.5R

Period in which authorisation or recognition is granted	Proportion of periodic fee payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

### **10.3 Obligation to pay notification and application fees**

#### **General**

- 10.3.1 R The *person* identified in *COLL 10 Annex 2R* as the relevant fee payer must pay each fee applicable to any application or notification as specified in *COLL 10 Annex 2R*.

#### **Due date**

- 10.3.2 R The relevant fee payer must pay a fee identified in *COLL 10 Annex 2R* on or before the date on which the relevant application or notification is made.
- 10.3.3 G Any application or notification, for which a fee is payable under this section, will be treated as incomplete until that fee is paid.

#### **Method of payment**

- 10.3.4 R A fee identified in *COLL 10 Annex 2R* must be paid by bankers draft, cheque or other payable order.

## Collective Investment Schemes

### COLL 10 Annex 2R

#### Application and notification fees payable

Table.

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella scheme factor (note 1)
Regulation 12 of the <i>OEIC Regulations</i>	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i> , where the <i>scheme</i> is: - <i>UCITS scheme</i> - <i>non-UCITS retail scheme</i> - <i>qualified investor scheme</i>	An applicant (Note 2)	£1,200 £1,500 £2,400	2
Section 242 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be an <i>AUT</i> , where the <i>scheme</i> is: - <i>UCITS scheme</i> - <i>non-UCITS retail scheme</i> - <i>qualified investor scheme</i>	An applicant (Note 2)	£1,200 £1,500 £2,400	2
Section 264 of the <i>Act</i>	On giving notice under section 264 of the <i>Act</i>	The <i>operator</i> (Note 3)	£600	2
Section 270 of the <i>Act</i>	On giving notice under section 270 of the <i>Act</i>	The <i>operator</i> (Note 3)	£600	2
Section 272 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be an individually recognised overseas <i>scheme</i> .	An applicant (Note 2)	£14,000	2

Notes:

1. For an *umbrella scheme* the fee is multiplied by the factor shown in final column of the table.



2. The fee must accompany the application.
3. The fee must accompany the notice.

- 1 COLL Sourcebook - Record keeping requirements  
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 1 Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>COLL</i> Transitional Provision 3	Election or revocation to comply with <i>CIS</i>	Details	At election or revocation	6 years
<i>COLL</i> 4.4.11R(5)	Minutes of meetings ( <i>AFM</i> )	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
<i>COLL</i> 6.2.5R(1)	<i>Issues and cancellations of units (AFM)</i>	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
<i>COLL</i> 6.4.6R(4)	Instruments of Transfer ( <i>person responsible for the register</i> )	Full details	From registration	6 years
<i>COLL</i> 6.6.6R(1)	General record-keeping obligations ( <i>AFM</i> )	Such as to demonstrate compliance with the rules in <i>COLL</i> .	As implicit from the rules in <i>COLL</i>	6 years
<i>COLL</i> 6.6.6R(2)	<i>Units held, acquired or disposed of (AFM)</i>	Daily record of <i>units held, acquired or disposed of by the AFM</i>	As implicit in rules in <i>COLL</i>	6 years
<i>COLL</i> 6.6.6R(3)	Dilution record-keeping obligations ( <i>AFM</i> )	How the <i>AFM</i> calculates and estimates <i>dilution</i> and its policy and method for determining the amount of any <i>dilution levy</i> or <i>dilution adjustment</i>	As implicit from the rules in <i>COLL</i>	6 years

<i>COLL</i> 6.6.12R(3)	General record-keeping obligations ( <i>depository</i> )	Such as to demonstrate compliance with the <i>rules</i> in <i>COLL</i> .	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
<i>COLL</i> 8.3.8R(2)	Minutes of meetings ( <i>AFM</i> )	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
<i>COLL</i> 8.5.2R(3)(e)	General record keeping obligations ( <i>AFM</i> )	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>
8.5.2R(3)(f)	<i>Units</i> held, acquired or disposed of ( <i>AFM</i> )	Daily record of <i>units</i> held, acquired or disposed of by the <i>AFM</i>	As implicit from the <i>rules</i> in <i>COLL</i>	6 years
<i>COLL</i> 8.5.4R(2)(h)	General record keeping obligation ( <i>depository</i> )	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>
<i>COLL</i> 8.5.10R(4)	<i>Issues</i> and <i>cancellations</i> of <i>units</i> ( <i>AFM</i> )	Full details	As implicit from the <i>rules</i> in <i>COLL</i>	As implicit from the <i>rules</i> in <i>COLL</i>

2 COLL Sourcebook - Notification requirements

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This schedule sets out the notification requirements detailed in *COLL* in respect only of notifications to be provided to the *FSA*. These notification requirements, it should be noted, are in addition to the notifications which must be made to the *FSA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) and under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).

1 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COLL</i> Transitional provision 3	Election or revocation to comply with CIS	Details and the date from which it is to take effect	At election or revocation	Immediate
<i>COLL</i> 3.2.7R(2)	<i>ICVC</i> with only one <i>sub-fund</i>	Action to rectify situation	<i>Umbrella</i> has only one <i>sub-fund</i>	24 months
<i>COLL</i> 3.2.8R(2)	Marketing of <i>UCITS</i> scheme in another <i>EEA State</i>	Details, including <i>EEA state</i> concerned	Intention to market	Immediate
<i>COLL</i> 4.2.3R(1)(b)	<i>Prospectus</i> and any revisions thereto	Copy provided	<i>Marketing scheme</i>	Before marketing begins
<i>COLL</i> 4.5.14R(2)(d)	Annual and half yearly reports	Copy of report	End of annual or <i>half-yearly accounting period</i>	Immediately on publication
<i>COLL</i> 5.2.24R(2)&(3)	Risk management process and any material alteration to it	Methods of estimating risk, types of <i>derivative</i> their underlying risk and any quantitative limits	Intention to use derivatives in the management of a <i>scheme</i> or any subsequent proposed material alteration to the risk management process	Before policy is implemented

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
<i>COLL</i> 6.5.3R(5)	Change of <i>ACD</i> , <i>directors</i> or <i>controller</i> of <i>ACD</i> or a corporate <i>director</i>	Details	Occurrence	Immediate
<i>COLL</i> 6.6.7R	Capital of <i>ICVC</i>	Details if capital: (a) falls below minimum or (b) exceeds maximum	Occurrence	Immediate
<i>COLL</i> 6.9.11R	Change to <i>ICVC</i> or to one of its officers	Details	Occurrence	14 days
<i>COLL</i> 7.2.1R(2)&(5)	Suspension or resumption of <i>dealing</i>	Details including reason for suspension	Occurrence	Immediate
<i>COLL</i> 7.3.5R(5)	Winding up a solvent <i>ICVC</i> or terminating a solvent <i>ICVC sub-fund</i> ( <i>Directors</i> )	Solvency statement	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	Within 21 days of notice given under regulation 21 of <i>OEIC Regulations</i>
<i>COLL</i> 7.3.7R(9)	Winding up a solvent <i>ICVC</i> or <i>sub-fund</i> of an <i>ICVC</i> ( <i>Depositary</i> )	Completion of winding up or termination of a <i>sub-fund</i>	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	As soon as reasonably practical after winding up completed
<i>COLL</i> 7.3.8R(6)	Winding up a solvent <i>ICVC</i> ( <i>ACD</i> )	Final accounts	Completion of winding up	Two months
<i>COLL</i> 7.3.8R(6)	Winding up a solvent <i>ICVC sub-fund</i> ( <i>ACD</i> )	Termination account and auditor's report	Termination of <i>sub-fund</i>	Two months
<i>COLL</i> 7.4.4R(6)	Winding up of an <i>AUT</i> or an <i>AUT sub-fund</i> ( <i>Trustee</i> )	Completion of winding up	Winding up of an <i>AUT</i>	Immediate
<i>COLL</i> 7.4.5R(5)	Winding up an <i>AUT</i> or <i>AUT sub-fund</i>	Annual reports of the <i>manager</i> and <i>trustee</i>	End of final accounting period	Two months
<i>COLL</i> 8.3.2R	<i>Prospectus</i> and revisions	Full documents	Before marketing commences	Immediate

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
<i>COLL</i> 8.3.5R(6)	Annual and half yearly reports	Copy of report	End of <i>annual</i> or <i>half yearly accounting period</i>	Immediately on publication
<i>COLL</i> 8.6.3R(3)&(5)	Suspension or resumption of <i>dealing (AFM)</i>	Details including reason for suspension	Occurrence	Immediate
<i>COLL</i> 9.3.1D	Notification of a <i>scheme</i> constituted in a <i>designated territory</i>	Prescribed details	Intention to market <i>scheme</i> in <i>UK</i>	As implicit from <i>rules</i> in <i>COLL</i>
<i>COLL</i> 9.3.1D	Application under S272 of the <i>Act</i>	Details	Intention to market <i>scheme</i> in the <i>UK</i>	Up to 6 months before commencing marketing

3 Fees and other required payments  
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1.	The aim of the <i>guidance</i> in the following table is to give the reader a quick overview of the relevant requirements for paying fees.
2.	It is not a complete statement of those requirements and should not be relied on as if it were.

2

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
Periodic fee	-	On or before 30 April in each year, or 30 days after the <i>scheme</i> is <i>recognised</i> or the <i>scheme's</i> <i>authorisation order</i> is made	See <i>COLL</i> 10 Ann 1R	<i>COLL</i> 10.2
Application/notification fee	See <i>COLL</i> 10 Ann 2R	On or before making the relevant application or notification	See <i>COLL</i> 10 Ann 2R	<i>COLL</i> 10.3
Conversion fee	See <i>COLL</i> Transitional Provision 10	On making the relevant notification	£400 for an individual <i>scheme</i> ; £800 for an <i>umbrella</i>	<i>COLL</i> Transitional Provision 10

4 COLL - Sourcebook – Powers Exercised  
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The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *COLL*:

1. Section 138 (General rule-making power)
2. Section 140 (Restriction on managers of authorised unit trust schemes)
3. Section 145 (Financial Promotion rules)
4. Section 156 (General supplementary powers)
5. Section 242 (Applications for authorisation of unit trust schemes)
6. Section 247 (Trust scheme rules)
7. Section 248 (Scheme particulars rules)
8. Section 278 (Rules as to scheme particulars)
9. Section 340 (Appointment)
10. Paragraph 17(1) of Schedule 1 (fees)
11. Regulation 6 (FSA rules) of the *OEIC regulations*

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COLL*:

12. Section 157(1) (Guidance)

The following powers in the *Act* have been exercised by the *FSA* in *COLL* to specify and direct:

13. Section 270(6)(b)
14. Section 274(2), (4) and (5)



5 COLL Sourcebook - Rights of action for damages

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The table below sets out the rules in *COLL* contravention of which by an authorised person may be actionable under section 150 of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed For private person, the rule may be actionable by a private person under section 150 unless a Yes appears in the column headed Removed. A Yes in the column headed Removed indicates that the *FSA* has removed the right of action under section 150(2) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

- (1) any individual, except when acting in the course of carrying on a regulated activity; and
- (2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

1 Actions for damages: the New Collective Investment Schemes Sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150			
			For private person?	Removed?	For other person?	
All rules in <i>COLL</i>			Yes	No	No	

6 COLL Sourcebook – Rules that can be waived

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1. The rules in *COLL* can be *waived* by the *FSA* under sections 148 or 250 of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (Modification or waiver of *FSA* rules), except *COLL* 3.2.8R (UCITS obligations) and *COLL* 6.9.9 (Restrictions of business for UCITS management companies).
2. Although the *FSA* has the formal power of *waiver* under the *Act* in relation to these *rules*, much of *COLL* implements the requirements of the *UCITS Directive* by ensuring that relevant *authorised funds* comply with such requirements. Accordingly, while formal power may exist to waive such *UCITS Directive* derived rules, the *FSA's* ability to do so is severely constrained.
3. No *rules* in *COLL* 10 (Fees) and *COLL* Transitional Provision 10 can be waived by the *FSA*.