

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 6)  
INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 139(4) (Miscellaneous ancillary matters);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance); and
    - (e) section 247 (Trust scheme rules); and
  - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 22 March 2012

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 6) Instrument 2012.

By order of the Board  
21 March 2012

## Annex

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

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

Significant information to be included in the short report

- 4.5.6 G For the purpose of *COLL* 4.5.5R(1)(d) and *COLL* 4.5.5R(1)(e) the *authorised fund manager* should consider including the following as sufficient and significant information:

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- (4) the total expense ratio at the end of the period or, in the case of a *UCITS scheme*, the ongoing charges figure together with (where appropriate) any performance-related fee payable to the *authorised fund manager* or any investment adviser, ~~as disclosed in the most up-to-date key investor information;~~

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Permitted transactions (derivatives and forwards)

- 5.2.20 R ...

- (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, approved money-market instruments, units in collective investment schemes or derivatives* provided that a sale is not to be considered as uncovered if the conditions in ~~*COLL* 5.2.22R(3) (Requirement to cover sales)~~ *COLL* 5.2.22R(1) (Requirement to cover sales), as read in accordance with the guidance at *COLL* 5.2.22AG, are satisfied.

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Guidance on syndicated loans

- 5.2.35 G (1) A syndicated loan for the purposes of this *guidance* means a form of loan where a group or syndicate of parties lend *money* to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders' interest in the loan and arrange or act as a

- conduit for the interest payments. Whether an interest in a syndicated loan constitutes a *transferable security* or otherwise will depend on the terms of the relevant instrument. Where an *authorised fund manager* plans to invest *scheme property* in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.
- (2) To determine whether an interest in a syndicated loan would be an eligible investment for a *UCITS scheme* in accordance with *COLL 5.2*, an *authorised fund manager* should first consider whether it constitutes a *transferable security* within the meaning of *COLL 5.2.7R* (Transferable securities) and then consider the additional eligibility criteria arising out of the *UCITS eligible assets Directive* that relate to liquidity, valuations and negotiability (see *COLL 5.2.7AR* (Investment in transferable securities)).
- (3) A *UCITS scheme* cannot lend money from its *scheme property*. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a *UCITS scheme* may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.
- (4) An instrument will not be a *transferable security* if it falls within one or more of the exclusions set out in article 77(2) of the *Regulated Activities Order*. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.
- (5) In the *FSA*'s opinion, for an instrument to be classed as a *debenture* for the purposes of constituting a *transferable security* (see *COLL 5.2.7R(1)(b)*), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a *debenture* for these purposes.
- (6) In the *FSA*'s view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of *COLL 5.2.7AR(1)(e)* (Investment in transferable securities), so as to make it a permissible investment for a *UCITS scheme*. When *securities* are capable of being traded on a capital market, whether *on-exchange* or *off-exchange*, as a class and are fungible within their class, this would tend to indicate (unless the *AFM* was aware of specific evidence to the contrary) that they are negotiable.
- (7) The *FSA*'s understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, *AFMs* should use similar analysis to determine whether or not

interests in such loans are eligible investments for UCITS schemes.

- (8) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a UCITS scheme is subject to the spread requirements in COLL 5.2.11R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.2.8R(3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the scheme's overall exposure to such loans will count towards the limit in COLL 5.2.8R(4).

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#### 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)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions), except if (2) applies.

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#### Permitted transactions (derivatives and forwards)

- 5.6.13 R ...
- (6) The authorised fund manager must ensure compliance with ~~COLL 5.3.6R (Continuing nature of limits and requirements)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions), COLL 5.3.3BR and COLL 5.3.3CR (Daily calculation of global exposure).

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#### Guidance on syndicated loans

- 5.6.25 G (1) COLL 5.2.35G (Guidance on syndicated loans) is equally applicable to investment by a non-UCITS retail scheme in a syndicated loan.
- (2) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a non-UCITS retail scheme is subject to the spread requirements in COLL 5.6.7R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.6.5R(1) (Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme), the

scheme's overall exposure to such loans will count towards the limit in COLL 5.6.5R(2).

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

7.3.4

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- (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:

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- (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*; or
- (d) on the effective date of a duly approved *scheme of arrangement* which is to result in the *ICVC* ceasing to hold any *scheme property*; or
- (e) in the case of a *sub-fund*, on the effective date of a duly approved *scheme of arrangement* which is to result in the *sub-fund* ceasing to hold any *scheme property*; or
- (f) in the case of an *ICVC* that is an *umbrella*, on the date on which all of its *sub-funds* fall within (e) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *ICVC* may have assets and liabilities that are not attributable to any particular *sub-fund*.

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Documents

9.4.2

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- (1A) For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).

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