

**AUTHORISED CONTRACTUAL SCHEMES (HANDBOOK AMENDMENTS)  
INSTRUMENT 2013**

**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137B(3) (FCA general rules: clients’ money, right to rescind etc.);
    - (c) section 137R (Financial promotion rules);
    - (d) section 137T (General supplementary powers);
    - (e) section 139A (Power of the FCA to give guidance);
    - (f) section 213 (The compensation scheme);
    - (g) section 214 (General);
    - (h) section 238 (Restrictions on promotion);
    - (i) section 247 (Trust scheme rules);
    - (j) section 248 (Scheme particulars rules);
    - (k) section 261C (Applications for authorisation of contractual schemes);
    - (l) section 261I (Contractual scheme rules); and
    - (m) section 261J (Contractual scheme particulars rules);
    - (o) section 395 (The FCA’s and PRA’s procedures);
    - (p) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority); and
    - (q) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;
  - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
  - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Changes to several modules	Annex A
Glossary of definitions	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for UCITS Firms (UPRU)	Annex D
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Supervision manual (SUP)	Annex H
Decision Procedure and Penalties manual (DEPP)	Annex I
Compensation sourcebook (COMP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Listing Rules sourcebook (LR)	Annex L
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex M

### Material outside the Handbook

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

### Notes

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

### Citation

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

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

## Annex A

## Amendments to the Handbook and the Regulatory guides

In this Annex:

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

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

**Table 1: ‘Deletions and replacements table’**

(1)	(2)	(3)	(4)	(5) Note:
<i>manager</i>	<i>authorised fund manager</i>	COLL	3.3.8R(1)	
			4.3.10R(1)(b)	
			4.4.13R(3)(b)	
			4.5.7R(3)	
			4.5.10R(2)(c)(ii)	
			5.3.5R(2)	
			5.5.4R(1)	
			5.5.7R(4)	
			5.6.18R(7)(c)	
			6.2.6R(1) and (2)	
			6.5.7R(1), (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(g), (1)(h), (1)(i), (2) and (3)	all three occurrences in (1)(i), all three occurrences in (2), all three occurrences in (3)
			6.6.13R(2)	
			7.7.4R(2)(b)	
			7.7.15G(1)	

			8.3.2R(3)	
			8.3.5AR(4)	
			8.4.9R(1)	
			8.4.10R(1)	
			8.4.11R(4)(c)	
			12.1.1R(1)(b)(i)(A)	
<i>manager</i>	<i>authorised fund manager</i> of an AUT or ACS	COLL	3.3.8R(2)	
			4.4.8R(4) and (5)	both occurrences in (4)
			5.4.3R	
			5.6.18R(4)	
			8.4.11R(2)(c) and (2)(d)	
<i>manager's</i>	<i>authorised fund manager's</i>	COLL	6.5.7R(1)(d)	
a manager	an authorised fund manager of an AUT or ACS	COLL	4.3.10R(1)(b)	
			heading of 6.5.7R	
or section 248 (Scheme particular rules)	, section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules)	PRIN, SYSC, TC, GEN, FEES, COBS, ICOBS, MCOB, BCOBS, CASS, MAR, SUP, DISP, COMP, PROF, LR, PR, and DTR	Schedule 6, 6.1 or 6.1A (as appropriate)	

<i>trustee</i>	<i>depository</i>	COLL	3.3.1R	
			4.4.11R(1)(a)	
			5.3.5R(2)	
			5.6.18R(7)(c)	
			6.2.6R(1)	
			6.5.7R(1), (1)(g), (1)(i), (2) and (3)	all three occurrences in (2)
			7.7.4R(2)(b)	
			8.4.11R(4)(c)	
<i>trustee</i>	<i>depository of an AUT or ACS</i>	COLL	4.4.2R(2)(d)	
			5.5.4R(1) and (3)	
			5.5.7R(4)	
			8.4.9R(1)	
			8.4.10R(1)	
<i>trustee</i>	<i>depository of the AUT or ACS</i>	COLL	6.2.13R(1)	
			6.2.14R(1)	

**Table 2: ‘Additions table’**

(1)	(2)	(3)	(4)	(5) Note:
, ACS	Glossary	definition of “ <i>authorised fund</i> ”	insert after “ <i>ICVC</i> ”	
		definition of “ <i>unitholder</i> ”	insert after “ <i>ICVC</i> ”	
	GEN	1.2.2R(2)(c)	insert after “ <i>AUT</i> ”	
	COLL	3.1.1R(1), (3) and concluding wording	insert after “ <i>AUT</i> ”	
		4.1.1R(1), (3) and concluding wording	insert after “ <i>AUT</i> ”	
		4.2.3R(1)	insert after “ <i>AUT</i> ”	

		4.6.1R	insert after “AUT”	both occurrences
		4.7.1R	insert after “AUT”	both occurrences
		4.8.1R	insert after “AUT”	both occurrences
		6.1.1R(1), (3) and concluding wording	insert after “AUT”	
		6.6.15AR(1)(a)	insert after “AUT”	both occurrences
		7.7.1R	insert after “AUT”	both occurrences
		8.1.1R(1)(a) and (1)(c)	insert after “AUT”	
		8.6.5R	insert after “ICVC”	
		12.4.1R(1)(a)	insert after “AUT”	
, Contractual Scheme Regulations	COLL	3.2.5G(1) and (2)	in 3.2.5G(1) insert after “OEIC Regulations”. In 3.2.5G(2) insert after “(particularly Schedule 2 – Instrument of Incorporation)”	
, Contractual Scheme Regulations	COLL	heading of 3.2.5G	insert after “OEIC Regulations”	
or ACS	Glossary	definition of “feeder fund”	insert after “AUT”	
		in paragraph (2) of the definition of “plan register”	insert after “AUT”	both occurrences
		in paragraph (b) of the definition of “scheme property”	insert after “AUT”	
	IPRU	5.2.3(2)R(ii)(c)	insert after “ICVC”	

	(INV)	5.2.3(3)(a)R(i)	insert after “ICVC”	
	COLL	3.3.1R	insert after “AUT”	
3.3.8R(1)		insert after “AUT”		
4.3.10R(1)(b)		insert after “AUT”		
4.4.11R(1)(a)		insert after “AUT”		
4.4.13R(3)(b)		insert after “AUT”		
4.5.7R(3)		insert after “AUT”		
4.5.8BR(2)		insert after “AUT”		
4.5.10R(2)(c)(ii)		insert after “AUT”		
5.3.5R(2)		insert after “AUT”		
5.5.9R(3)(c)		insert after “AUT”		
5.6.18R(7)(c)		insert after “AUT”		
6.1.3G(3)		insert after “ICVC”		
6.2.6R(1)		insert after “AUT”		
6.4.2G		insert after “AUT”		
6.4.9R(1)		insert after “AUT”		
6.5.7R(1), (2) and (3)		insert after “AUT”	both occurrences in (2), both occurrences in (3)	
6.6.13R(2)		insert after “AUT”		
6.9.3G(3)		insert after “AUT”		
7.7.4R(2)(b)		insert after “AUT”		
7.7.15G(1)		insert after “AUT”		
8.3.2R(3)	insert after “AUT”			
8.3.5AR(4)	insert after “AUT”			
8.3.5ER(2)	insert after “AUT”			

		8.4.11R(4)(c)	insert after “AUT”	
		11.5.5G	insert after “AUT”	
		12.1.1R(1)(b)(i)(A)	insert after “AUT”	
or ACS	COLL	6.2.10R	insert after “AUT”	
or ACS,	CASS	7.2.8BR(1)	insert after “AUT”	
or <i>contractual scheme deed</i>	COLL	6.2.14R(1)	insert after “ <i>trust deed</i> ”	
or section 261Q	COLL	11.6.3R(3)	insert after “section 251”	
		11.6.5R(1)(b), (2)(b) and (4)	insert after “section 251”	
		11.6.13R	insert after “section 251”	
or section 261S	COLL	11.6.3R(2)(a)	insert after “section 252A”	
		11.6.5R(3)(a)	insert after “section 252A”	
, section 261Q of the <i>Act</i> (Alteration of contractual schemes and changes of operator or depository)	COLL	4.3.2G(2)	insert after “(The Authority’s approval for certain changes in respect of a company)”	
		6.5.10R(3)	insert after “(Alteration of schemes and changes of manager or trustee)”	
		7.6.1G(1)	insert after “(Alteration of schemes and changes of manager or trustee)”	
		11.6.3R(1)(b)	insert after “of the <i>Act</i> ”	



## Annex B

### Amendments to the Glossary of definitions

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

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

<i>ACS</i>	an <i>authorised contractual scheme</i> .
<i>acting as the depositary of an authorised contractual scheme</i>	the <i>regulated activity</i> , specified in article 51(1)(bb) of the <i>Regulated Activities Order</i> (Establishing etc. a collective investment scheme), of acting as the <i>depositary</i> of an <i>authorised contractual scheme</i> .
<i>authorised contractual scheme</i>	a <i>co-ownership scheme</i> or a <i>limited partnership scheme</i> .
<i>authorised contractual scheme manager</i>	a <i>firm</i> , including, if relevant, an <i>EEA UCITS management company</i> , which is the <i>authorised fund manager</i> of the <i>ACS</i> in accordance with the <i>contractual scheme deed</i> .
<i>contractual scheme deed</i>	(in <i>COLL</i> ) the deed referred to in <i>COLL</i> 3.2.3AR (The contractual scheme deed for ACSs), together with any deed expressed to be supplemental to it, made between the <i>authorised fund manager</i> and: <ul style="list-style-type: none"> <li>(a) the <i>depositary</i>, in the case of a <i>co-ownership scheme</i>; or</li> <li>(b) the <i>nominated partner</i>, in the case of a <i>limited partnership scheme</i>.</li> </ul>
<i>Contractual Scheme Regulations</i>	the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/1388).
<i>contractual scheme rules</i>	<i>rules</i> in <i>COLL</i> made by the <i>FCA</i> under section 261I of the <i>Act</i> (Contractual scheme rules) in relation to: <ul style="list-style-type: none"> <li>(a) the constitution, management and operation of ACSs;</li> <li>(b) the powers, duties, rights, and liabilities of the <i>authorised fund manager</i> and <i>depositary</i> of any such <i>scheme</i>;</li> <li>(c) the rights and duties of the <i>participants</i> in any such <i>scheme</i>; and</li> <li>(d) the winding up of any such <i>scheme</i>.</li> </ul>
<i>co-ownership scheme</i>	(as defined in section 235A(2) of the <i>Act</i> (Contractual schemes)) a <i>collective investment scheme</i> which satisfies the conditions in section 235A(3) and which is authorised for the purposes of the <i>Act</i> by an

*authorisation order.*

*intermediate unitholder*

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

- (a) does not *manage investments* on behalf of the relevant beneficial owner of the *unit*; or
- (b) does not act as a *depository* of a *collective investment scheme* or on behalf of such a *depository* in connection with its role in holding property subject to the *scheme*.

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

*intermediate unitholder in a qualified investor scheme*

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

- (a) does not *manage investments* on behalf of the relevant beneficial owner of the *unit*; or
- (b) does not act as a *depository* of a *collective investment scheme* or on behalf of such a *depository* in connection with its role in holding property subject to the *scheme*.

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

*large ACS investor*

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

- (a) makes a payment of not less than £1,000,000; or
- (b) contributes property with a value of not less than £1,000,000.

*limited partner*

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

*limited partnership scheme*

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

*nominated partner*

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

*professional ACS investor* in relation to an ACS, a *person* who falls within one of the categories (1) to (4) of Section I of Annex II (professional clients for the purpose of that directive) to *MiFID*.

Amend the following as shown.

*affected person* ...

(b) (in relation to an *AUT*):

...

(v) the auditor of the *scheme*;

(c) (in relation to an ACS):

(i) the authorised fund manager;

(ii) the depositary;

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

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

(v) the auditor of the scheme;

(vi) the nominated partner.

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

...

(f) ...

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

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

...

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

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

<i>authorised fund manager</i>	an <u>ACD</u> , an <u>authorised contractual scheme manager</u> or an <u>authorised unit trust manager</u> .
<i>base currency</i>	<p>(1) (in <i>COLL</i>) the currency specified:</p> <p>...</p> <p>(b) in the <i>trust deed</i> of an <i>AUT</i> as the base currency of the <i>AUT</i>; <u>or</u></p> <p>(c) <u>in the contractual scheme deed of an ACS as the base currency of the ACS.</u></p> <p>...</p>
<i>cancellation</i>	<p>(in <i>COLL</i>) (in relation to <i>units</i>) a cancellation of a <i>unit</i> by:</p> <p>(a) an <i>ICVC</i>; <u>or</u></p> <p>(b) <del>by</del> the <i>trustee</i> of an <i>AUT</i>; <u>or</u></p> <p>(c) <u>the depositary of an ACS.</u></p>
<i>depositary</i>	<p>(1) (except in <i>LR</i>):</p> <p>...</p> <p>(ca) ...</p> <p>(cb) <u>(in relation to an ACS which is a co-ownership scheme) the person who holds the property subject to the scheme or to whose order that property is held, as required by section 235A(3)(d) of the Act (Contractual schemes);</u></p> <p>(cc) <u>(in relation to an ACS which is a limited partnership scheme) the person who holds the property subject to the scheme or to whose order that property is held, and who has been appointed to be the person to whom the property subject to the scheme is entrusted for safekeeping, as required by section 235A(6)(e)(i) of the Act (Contractual schemes);</u></p> <p>...</p> <p>...</p>
<i>designated investment business</i>	<p>any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business):</p> <p>...</p>

- (k) ...
- (ka) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));
- ...
- Financial Services Register* the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers) and regulation 4 of the *Electronic Money Regulations*, of every:
  - ...
  - (c)
  - (ca) ACS;
  - ...
- instrument constituting the scheme* ...
- (ba) ...
- (bb) (in relation to an ACS) the contractual scheme deed;
- ...
- investment adviser* (in relation to an *authorised fund*) a person who is retained by an *ICVC*, its *directors* or its *ACD* or by a *manager* of an *AUT* or by an authorised contractual scheme manager of an ACS under a commercial arrangement which is not a contract of service:
  - ...
- investment management firm* ... a firm ... which is within (a), (b) or (c):
  - ...
  - (c) a firm:
    - ...
    - (ii) for which the most substantial part of its gross income ... is derived from one or more of the following activities...:
      - ...
      - (D) ...

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

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

...

*issue*

(in relation to *units*):

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

...

*issuer*

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

...

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

...

...

*management company*

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

*operator*

(1) (except in EG):

(a) ...

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

...

(c) ...

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

...

- ...
- overseas person* (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a *person* who:
- (a) carries on any of the following *regulated activities*:
- ...
- (xiii) ...
- (xiiia) acting as the depositary of an authorised contractual scheme;
- ...
- ...
- redemption* (1) ...
- (2) (in *EG 14* (Collective investment schemes)) redemption as in (1) but including their cancellation by:
- (a) the trustee of an AUT;
- (b) the depositary of an ACS; or by
- (c) an ICVC.
- register* (1) ...
- (2) ...
- (3) (in *COLL*) the register of *unitholders* kept under Schedule 3 to the *OEIC Regulations* or *COLL* 6.4.4R (Register: general requirements and contents), or *COLL* 8.5.8R (The register of unitholders: AUTs or ACSs) as appropriate or, in relation to a *collective investment scheme* that is not an *authorised fund*, a record of the holders (other than of *bearer certificates*) of *units* in it.
- regulated activity* (in accordance with section 22 of the *Act* ( Regulated activities)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):
- ...
- (m) ...
- (ma) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));

	...
<i>regulated collective investment scheme</i>	...  (b) ...  (ba) <u>an ACS; or</u>  ...
<i>unit</i>	the investment, specified in article 81 of the <i>Regulated Activities Order</i> (Units in a collective investment scheme) and defined in section 237(2) of the <i>Act</i> (Other definitions)), which is the right or interest (however described) of the <i>participants</i> in a <i>collective investment scheme</i> ; this includes:  (a) ...  (aa) <u>(in relation to an ACS) a unit representing the rights or interests of the unitholders in the ACS; and</u>  ...
<i>unit trust scheme</i>	(as defined in section 237(1) of the <i>Act</i> (Other definitions)) a <i>collective investment scheme</i> under which the property in question is held on trust for the <i>participants</i> , <u>except that it does not include an authorised contractual scheme.</u>  ...
<i>unitisation</i>	arrangements for a newly formed <i>AUT</i> <u>or ACS</u> under which:  (a) the whole or part of the property of a <i>body corporate</i> (or a <i>collective investment scheme</i> ) becomes the first <del>property to be held on the trusts</del> <u>scheme property</u> of the <i>AUT</i> <u>or ACS</u> ; and  (b) the <i>holders</i> of:  (i) <i>shares</i> in the <i>body corporate</i> being wound up; or  (ii) <i>units</i> in the <i>collective investment scheme</i> , the property of which is being transferred;  become the first <i>participants</i> in the <i>AUT</i> <u>or ACS</u> .  ...
<i>unrecognised scheme</i>	(in <i>LR</i> ) a <i>collective investment scheme</i> which is neither a <i>recognised scheme</i> nor a scheme that is constituted as an <i>authorised unit trust scheme</i> <u>or authorised contractual scheme.</u>



*waiver*

a direction waiving or modifying a *rule*, given by the *appropriate regulator* under section 138A of the *Act* (Modification or waiver of rules) or by the *FCA* under sections 250, 261L or 294 of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (see *SUP 8* and *REC 3.3*).

## Annex C

## Amendments to the Fees manual (FEES)

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

## 1.1 Application and Purpose

...

Application

1.1.2 R The manual applies in the following way:

(1) ...

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

...

(b) every ~~manager~~ authorised fund manager of an authorised unit trust ~~unit trust~~ or authorised contractual scheme;

...

...

...

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

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella factor (note 1)
...				
Part 2 Application fees payable for firms to be subject to <i>COLL</i>				
...				
Section 242 of the <i>Act</i>	...			
<u>Section 261C of the <i>Act</i></u>	<u>On application for an order declaring a <i>scheme</i> to be an <i>ACS</i>, whether it is established as a <i>co-ownership scheme</i> or a <i>limited partnership</i></u>	<u>An applicant</u>		<u>2</u>

	<i>scheme, where the scheme is a:</i>			
	<i>UCITS scheme</i>		£1,200	
	<i>non-UCITS retail scheme</i>		£1,500	
	<i>qualified investor scheme</i>		£2,400	
...				

...

**4.2 Obligation to pay periodic fees**

...

4.2.11 R Table of periodic fees payable to the FCA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
...	...	(1) Unless (2) applies, on or before 30 April	...
Any <i>manager</i> of an <i>authorised</i> unit trust;	In relation to each unit trust the amount specified in <i>FEES</i> 4 Annex 4R	(2) If an event in column 4 occurs during the course of a <i>fee</i> year, 30 days after the occurrence of that event ...	<i>Authorisation order</i> is made in relation to the relevant <i>scheme</i>
<u>Any authorised fund manager</u> of an <u>authorised contractual scheme</u> ;	<u>In relation to each authorised contractual scheme the amount specified in FEES 4 Annex 4R</u>		
...	...		...
...			

...

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

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

...

<b>Part 3</b> This table indicates the tariff base for each fee-block set out in Part 1.	
Activity group	Tariff base
...	
<b>A.9</b>	<b>GROSS INCOME</b> For <i>operators</i> (including <i>ACDs</i> and <del><i>managers</i></del> <i>authorised fund managers</i> of <i>unit trusts</i> or <i>authorised contractual schemes</i> but excluding <i>operators</i> of a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> ): ... <b>PLUS</b> ... For <i>depositaries</i> (including <i>trustees</i> of <i>collective investment schemes</i> and <i>ICVC</i> or <i>ACS depositaries</i> ): The amount of the annual charge levied on funds in <i>regulated collective investment schemes</i> for which they act as <i>depository</i> (typically a % of the total funds for which they act as <i>depository</i> ). ...
...	

...

...

**4 Annex 4R Periodic fees in relation to collective investment schemes payable for the period 1 April 2012 to 31 March 2013**

Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
ICVC, AUT, <u>ACS</u> , Section 264 of the <i>Act</i> Section 270 of the <i>Act</i>	...	1 – 2	1	...
		3 – 6	2.5	
		7 – 15	5	
		16 – 50	11	
		> 50	22	
...				

...

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

...

	Investment
<b>Class D1</b>	Investment provision
...	
Firms with permission for:	Any of the following:
	...
	<i>acting as trustee of an authorised unit trust scheme;</i>
	<u><i>acting as the depositary of an authorised contractual scheme;</i></u>
	...
...	

...

## Annex D

### Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

#### Schedule 6 Rules that can be waived

##### 6.1 G

1.	The rules in this sourcebook can be <i>waived</i> by the <i>FCA</i> under sections 138A and 138B, <del>or 250 or 261L</del> of the <i>Act</i> (Modification or waiver of rules) or regulation 7 of the <i>OEIC Regulations</i> (Modification or waiver of FCA rules).
2.	...

## Annex E

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

In this Annex, underlining indicates new text.

#### 7 Chapter 7: Definitions

##### Part 1 DEFINITIONS

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

...
<i>issuer</i> in respect of a <i>collective investment scheme</i> means the manager or operator of the scheme and in respect of an interest in a limited partnership ( <u>other than a <i>limited partnership scheme</i></u> ) means the partnership;
...

## Annex F

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

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

...

**Appendix 1            GLOSSARY OF TERMS FOR IPRU(INV) 3**

...

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

...

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

...

...

**5                    Chapter 5: Financial Resources**

...

**Table 5.2.3(5)(a)      EXPENDITURE BASED REQUIREMENT**

...

**PART II**

**FRACTIONS**

1: The fraction is 6/52 where:

(a) ...

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

...

...

**Note:** Paragraph 1(a) above includes a *firm* which acts as ~~both~~ an *authorised unit trust manager* and, in addition, as both or either:



- (a) an authorised corporate director of an ICVC; or
- (b) an authorised contractual scheme manager.

...

**Table 5.2.3(5)(e) OTHER ASSETS REQUIREMENT**

...

**PART II**

**RISK FACTORS**

<b>Assets and Off-Balance Sheet Items</b>	<b>Risk Factor</b>
---	--------------------

...

Amount due from trustees of authorised unit trusts <u>or</u> depositaries of <i>authorised contractual schemes</i>	NIL
--	-----

**Note**

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

...

...

**Appendix 1: Interpretation**

Glossary of terms for Chapter 5 (Former IMRO Firms)

...

<b>Term</b>	<b>Meaning</b>
-------------	----------------

...

<u><i>authorised contractual scheme</i></u>	<u><i>a co-ownership scheme or a limited partnership scheme.</i></u>
---	--

<u><i>authorised contractual scheme manager</i></u>	<u><i>means the authorised fund manager of an authorised contractual scheme.</i></u>
---	--

...

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

...

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

...

**Annex G****Amendments to the Conduct of Business sourcebook (COBS)**

In this Annex, underlining indicates new text.

**14.2 Providing product information to clients**

...

Provision of key investor information document

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

...

## Annex H

### Amendments to the Supervision manual (SUP)

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

#### 6.1 Application, interpretation and purpose

Application

...

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

...

#### 8.2 Introduction

...

Waivers of rules in COLL

- 8.2.3 G ~~Section~~ Sections 250 and 261L of the *Act* and regulation 7 of the *OEIC Regulations* allow the *FCA* to *waive* the application of certain *rules* in *COLL* to:
- (1) a *person*, as respects a particular *AUT*, *ACS* or *ICVC*, on the application or with the consent of that *person*; and
  - (2) an *AUT*, *ACS* or *ICVC* on the application or with the consent of the *manager* and *trustee* (in the case of an *AUT*), the *authorised contractual scheme manager* and *depository* (in the case of an *ACS*) or the *ICVC* and its *depository* (in the case of an *ICVC*).
- 8.2.4 G Those *persons* to whom ~~section~~ sections 250 and 261L and regulation 7 of the *OEIC Regulations* are relevant, but who are not *firms*, should follow *SUP 8* as if they were *firms*.
- 8.2.5 G ~~Section~~ Sections 250 and 261L of the *Act* and regulation 7 of the *OEIC Regulations* work by giving effect to section 138A of the *Act* in respect of *waivers* given under section 250(2) and (3), section 261L(2) and (3) and regulation 7(1) and (2) of the *OEIC Regulations*.

...

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

...

...		
<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<i>SUP</i>	...	
	<p><i>SUP</i> 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(d)...</p> <p><u>(da) a depositary of an ACS; or</u></p> <p>...</p>	<p><i>SUP</i> 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <p>...</p> <p>(c)...</p> <p><u>(ca) a depositary of an ACS; or</u></p> <p>...</p>
	...	...
...		
<i>COLL</i>	<p>...</p> <p>An <i>EEA UCITS management company</i> providing <i>collective portfolio management</i> services for a <i>UCITS scheme</i> should be aware that it will be expected to comply with the above <i>rules</i> in relation to all aspects of the functioning of the relevant <i>UCITS scheme</i> where, for example, the <i>firm</i>:</p> <p>...</p> <p>(b) wishes to apply for an <i>authorisation order</i> to establish an <i>AUT, ACS</i> or <i>ICVC</i></p>	...

	as a <i>UCITS scheme</i> ; or ...	
--	--------------------------------------	--

...

...

## 16.1 Application

...

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

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP 16.6</i>	...	
	<i>Trustee of an AUT</i>	<i>SUP 16.6.6R to SUP 16.6.9G</i>
	<i>Depository of an ACS</i>	<i>SUP 16.6.6R to SUP 16.6.9G</i>
...		

...

## 16.6 Compliance reports

...

Applicable provisions of this section (see SUP 16.6.1G)

Category of firm	Applicable provisions
...	
<i>Trustee of an AUT</i> <i>Depository of an ICVC</i> <i>Depository of an ACS</i>	<i>SUP 16.6.6R - SUP 16.6.9G</i>
...	

...

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

- 16.6.6 R A firm within a category listed in the left-hand column of SUP 16.6.7R must submit compliance reports in accordance with SUP 16.6.7R.

16.6.7 R Compliance reports from trustees of AUTs, depositaries of ICVCs and ACSs, and OPS firms (see SUP 16.6.6R)

Report	Frequency	Due Date
Report from a <i>trustee</i> of an <i>AUT</i> on <i>manager's</i> failures as set out in SUP 16.6.8R(1)	Quarterly	1 month after quarter end (Note)
Report from a <u>depositary of an ACS</u> on failures by the <u>authorised contractual scheme manager</u> as set out in SUP 16.6.8R(2A)	<u>Quarterly</u>	<u>1 month after quarter end (Note)</u>
...		

16.6.8 R ...

(2) ...

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

- (a) arrange for the issue or cancellation of units in the ACS when the authorised contractual scheme manager should have done so, and the error:
  - (i) resulted in the creation of too few units or in the cancellation of too many units; and
  - (ii) was not corrected in accordance with the FCA's guidance as set out in COLL 6.2.12G;
- (b) price units in the ACS in accordance with the provisions of COLL 6.3, where the pricing error was:
  - (i) greater than 0.5% of the price of a unit; or
  - (ii) less than 0.5% of the price of a unit, and the depositary did not consider the authorised contractual scheme manager's controls to be

adequate;

unless the failure was an isolated incident.

...

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

...

## 16.12 Integrated Regulatory Reporting

...

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

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable data items	reporting frequency/ period	due date
...				
RAG 6	<ul style="list-style-type: none"> <li>acting as trustee of an authorised unit trust</li> <li><u>acting as the depository of an authorised contractual scheme</u></li> <li>...</li> </ul>	SUP 16.12.19R	SUP 16.12.20R	SUP 16.12.21 R
...				

...



## SUP 16 Ann 12G:

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

#### 1 Table

##### 1. ~~Trustees~~ Depositaries of AUTs and ACSs

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

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

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

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

##### 2. Depositaries of ICVCs

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

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

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

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

**SUP 16: Reporting requirements**

**Annex 12G**

**Form 1**

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

1. Pricing Errors

<u>Authorised Fund Manager</u>	Did status of <u>authorised fund</u> manager change in quarter? (Note)	No. of pricing errors of 0.5% and above	No. of pricing errors below 0.5%, where <del>trustee</del> <u>depository</u> does not consider <u>authorised fund</u> manager’s controls to be adequate	No. of authorised unit trusts <u>or</u> <u>authorised contractual schemes</u> in operation
<p>Note = From “controls adequate” to “controls inadequate” (or vice versa). Where the <u>authorised fund</u> manager’s status changed, the report should state the date of that change and the number of reportable breaches of <u>CIS 4 and 15 COLL 6</u> before and after that change of status.</p>				

2. Negative Boxes

<u>Authorised Fund Manager</u>	Did status of <u>authorised fund</u> manager change in quarter? (Note 1)	No. of negative boxes where <del>CIS 4.3.12 COLL 6.2.10R and CIS 15.3.12R</del> <u>have has not</u> been applied. (Note 2)	No. of authorised unit Trusts <u>or</u> <u>authorised contractual schemes</u> in operation
<p>Note 1 = From “controls adequate” to “controls inadequate” (or vice versa). Where the <u>authorised fund</u> manager’s status changed, the report should state the date of that change and the number of reportable breaches of <u>CIS 4 and 15 COLL 6</u> before and after that change of status.</p>			
<p>Note 2 =. The application of <del>CIS 4.3.12R and CIS 15.3.12R</del> <u>COLL 6.2.10R</u> relates to the correction of an error by the <u>authorised fund</u> manager with the <del>trustee’s</del> <u>depository’s</u> agreement in accordance with <del>CIS 4.3.12R and CIS 15.3.12R</del> <u>COLL 6.2.10R</u>.</p>			

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

Knowingly or recklessly giving the *FCA* information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). *SUP* 15.6.1R and *SUP* 15.6.4R require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. *SUP* 16.3.11R requires an *authorised person* to submit reports containing all the information required. *APER* 4.4.6E provides that, where an

*approved person* is responsible for reporting matters to the *FCA*, failure to inform the *FCA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If there is any doubt about the relevance of information, it should be included.

See *SUP 16.3* for method of submission.

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

Signed

Name

Position

Date

## SUP 16: Reporting requirements

## Annex 12G

## Form 2

Quarterly Return of Notifiable Breaches – Investment Companies with Variable Capital

## 1. Pricing Errors

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

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

## 2. Negative Boxes

Authorised Corporate Director (ACD)	Did status of ACD change in quarter? (Note 1)	No. of negative boxes where <del>CIS 4.3.12R</del> <u>COLL 6.2.10R</u> has not been applied. (Note 2)	2. No. of Investment Companies with Variable Capital in operation

Note 1 = From "controls adequate" to "controls inadequate" (or vice versa). Where the ACD's status changed, the report should state the date of that change and the number of reportable breaches under ~~6 CIS 4~~ COLL 6.2.10R before and after that change of status.

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

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

Knowingly or recklessly giving the *FCA* information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). *SUP* 15.6.1R and *SUP* 15.6.4R require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided. *SUP* 16.3.11R requires an

*authorised person* to submit reports containing all the information required. *APER* 4.4.6E provides that, where an *approved person* is responsible for reporting matters to the *FCA*, failure to inform the *FCA* of materially significant information of which he is aware is a breach of *Statement of Principle 4*. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If there is any doubt about the relevance of information, it should be included.

See *SUP* 16.3 for method of submission.

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

Signed

Name

Position

Date

## Annex I

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

#### 2.5 Provision for certain categories of decision

...

Modified procedures in collective investment scheme and certain other cases

...

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

(1) ...

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

...

(4)

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

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

...

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

(1) ...

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

...

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

will be taken by *FCA* staff under *executive procedures*.

...

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

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

Section of the Act	Description	Handbook reference	Decision maker
...			
260(1)/(2)	...		
<u>261G(1)/(2)</u>	<u>when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>scheme</i> to be an <i>ACS</i></u>	<u><i>COLL 2</i></u>	<u><i>RDC</i> or <i>executive procedures</i></u> <u>See <i>DEPP</i> 2.5.15G</u>
<u>261R(1)/(4)</u>	<u>when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>depository</i> or <i>authorised contractual scheme manager</i> of an <i>ACS</i></u>	<u><i>COLL 2</i></u>	<u><i>Executive procedures</i></u>
<u>261S(4)(b)/(6)(a)</u>	<u>when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by the <i>authorised contractual scheme manager</i> of an <i>ACS</i> which is a <i>feeder UCITS</i> to make an alteration to the <i>contractual scheme deed</i> to enable the <i>feeder UCITS</i> to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i></u>	<u><i>COLL 11</i></u>	<u><i>Executive procedures</i></u>
<u>261V(1)/(2)</u>	<u>when the <i>FCA</i> is proposing or deciding to make an order under section 261U revoking</u>	<u>None, but see <i>Chapter 14</i> of the</u>	<u><i>RDC</i></u>

	<u>the <i>authorisation order</i> of an <i>ACS</i>*</u>	<u>Regulatory Guide <i>EG</i>.</u>	
<u>261W(4)/(5)</u>	<u>when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>ACS</i></u>		<i>RDC</i>
<u>261Z2(1)/(2)</u>	<u>when the <i>FCA</i>, on an application to revoke or vary a direction under section 261X, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application</u>		<i>RDC</i>
...			
345B(1) 345B(4)	when the <i>FCA</i> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <i>authorised person</i> or class of <i>authorised person</i> or from being the auditor of any <i>AUT</i> , <i>ACS</i> or <i>ICVC</i> *		<i>RDC</i>
...			

## 2 Annex 2G Supervisory notices

Section of the Act	Description	Handbook reference	Decision maker
...			
259(3)/(8)/(9)(b)	...		



<u>261Z1</u>	<u>when the FCA gives a direction under section 261X or section 261Z</u>	<u>COLL</u>	<u>RDC</u>
...			

## Annex J

### Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

#### 5.5 Protected investment business

5.5.1 R *Protected investment business* is:

...

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

...

...

## Annex K

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

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

#### 1.1 Applications and purpose

Application

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

...

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

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

...

...

...

EEA UCITS management companies of UCITS schemes

1.1.1C G An *EEA UCITS management company* that is providing *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, is advised that where it operates a *UCITS scheme* as its designated *management company*, it meets the *Glossary* definition of an “*ACD*” of an *ICVC*<sub>2</sub> or a “*manager*” of an *AUT* or an authorised contractual scheme manager of an *ACS*, which in each case is a *UCITS scheme*. Such *firms* should be aware that provisions in this sourcebook that apply to an *ACD*<sub>2</sub> ~~or a manager~~ or an authorised fund manager of a *UCITS scheme* accordingly apply to them, unless otherwise indicated: see *COLL* 12.3 (EEA UCITS management companies) for further details.

...

#### 1.2 Types of authorised fund

...

Umbrella schemes

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

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

Types of authorised fund - explanation

- 1.2.2 G ...

- (4) The changes referred to in (2) and (3) require approval by the *FCA* and further information on that process is provided in *COLLG 3.1.5G* ~~3A.1.6 G~~ (Notification of changes to unit trusts (sections 251 and 252A)) and *COLLG 4.1.3G* ~~4A.1.3G~~ (Notification of changes to ICVCs (~~Regulation~~ Regulations 21 and 22A)).

...

## 2.1 Authorised fund applications

...

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) or section 261C of the Act (Applications for authorisation of contractual schemes).

...

...

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

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

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

...

## 3.1 Introduction

...

## Purpose

- 3.1.2 G This chapter assists in achieving the *statutory objective* of protecting *consumers*. In particular:
- (1) *COLL 3.2* (The instrument constituting the scheme) contains requirements about provisions which must be included in the *instrument constituting the scheme* to give a similar degree of protection for investors in an *ICVC* ~~or in an~~ *AUT* or *ACS*; and

...

...

### 3.2 The instrument constituting the scheme

## Application

- 3.2.1 R This section applies to:
- (1) an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*;
- (2) ...
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; ~~and~~
- (4) an *ICVC*; ~~and~~
- (5) a *nominated partner*;

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

...

#### The contractual scheme deed for ACSs

- 3.2.3A R An *ACS* must be constituted by a *contractual scheme deed* made between the *authorised contractual scheme manager* and:
- (1) the *depository*, in the case of a *co-ownership scheme*; or
- (2) the *nominated partner*, in the case of a *limited partnership scheme*.

...

## Table: contents of the instrument constituting the scheme

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

instrument constituting the scheme)

...	
	Unitholder's liability to pay
3	A provision that a <i>unitholder in an AUT, ICVC or co-ownership scheme</i> is not liable to make any further payment after he has paid the <i>price</i> of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> which he holds.
3A	<u>A provision that a <i>unitholder</i> in a <i>limited partnership scheme</i> is not liable for the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised contractual scheme manager</i> to meet such debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business.</u>
3B	<u>A provision that the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business.</u>
...	
	Issue or cancellation directly through the ICVC or <del>trustee</del> <u>depository of an AUT or ACS</u>
11	Where relevant, a statement authorising the <i>issue or cancellation</i> of <i>units</i> to take place through the <i>ICVC</i> or <del>trustee</del> <u>depository of an AUT or ACS</u> directly.
...	
	Certificates
15	A statement:
	(1) <u>for <i>ICVCs</i> and <i>AUTs</i>, authorising the issue of <i>bearer certificates</i> if any, and how such <i>holders</i> are to identify themselves; and</u>
	...
	...
	<u>ICVCs and ACSs: Charges and expenses</u>
22	A statement that charges or expenses of the <i>ICVC</i> or <u>ACS</u> may be taken out of the <i>scheme property</i> .
...	

	<u>Co-ownership schemes: umbrella schemes - principle of limited recourse</u>	
<u>22B</u>	<u>For a <i>co-ownership scheme</i> which is an <i>umbrella</i>, a statement that the property subject to a <i>sub-fund</i> is beneficially owned by the <i>participants</i> in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>.</u>	
...		
27	...	
	<u>ACs: governing law for a contractual scheme deed</u>	
<u>27A</u>	<u>A statement that the <i>contractual scheme deed</i> is made under and governed by the law of England and Wales, or Scotland or Northern Ireland.</u>	
	<u>ACs: contractual scheme deed to be binding and authoritative</u>	
<u>27B</u>	<u>A statement that the <i>contractual scheme deed</i>:</u>	
	<u>(1)</u>	<u>is binding on each <i>unitholder</i> as if it had been a party to it and that it is bound by its provisions; and</u>
	<u>(2)</u>	<u>authorises and requires the <i>depository</i> and the <i>authorised contractual manager</i> to do the things required or permitted of them by its terms.</u>
	<u>ACs: ownership of scheme property</u>	
<u>27C</u>	<u>A statement that, subject to the provisions of the <i>contractual scheme deed</i> and all <i>rules</i> made under section 261I of the <i>Act</i> (<i>Contractual scheme rules</i>) and for the time being in force:</u>	
	<u>(1)</u>	<u>the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by, or to the order of, the <i>depository</i> for and on behalf of the <i>unitholders</i> according to the number of <i>units</i> held by each <i>unitholder</i> or, where relevant, according to the number of undivided shares in the <i>scheme property</i> represented by the <i>units</i> held by each <i>unitholder</i>;</u>
	<u>(2)</u>	<u>the sums standing to the credit of the <i>distribution account</i> are held by the <i>depository</i> to distribute or apply them in accordance with <i>COLL 6.8</i> (<i>Income: accounting, allocation and distribution</i>); and</u>
	<u>(3)</u>	<u>the <i>scheme property</i> of a <i>co-ownership scheme</i> is beneficially owned by the <i>participants</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i>).</u>
	<u>ACs: responsibility for the register</u>	

<u>27D</u>	<u>A statement identifying the <i>person</i> responsible under the <i>rules</i> for the maintenance of the <i>register</i>.</u>	
	<u>ACsSs: UCITS and NURS eligible investors</u>	
<u>27E</u>	<u>For an ACS which is a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i>, a statement that <i>units</i> may not be <i>issued</i> to a <i>person</i> other than a:</u>	
	<u>(1)</u>	<u><i>professional ACS investor</i>;</u>
	<u>(2)</u>	<u><i>large ACS investor</i>; or</u>
	<u>(3)</u>	<u><i>person</i> who already holds <i>units</i> in the <i>scheme</i>.</u>
<u>27F</u>	<u>A statement that the <i>authorised contractual scheme manager</i> must <i>redeem units</i> as soon as practicable after becoming aware that those <i>units</i> are vested in anyone (whether as a result of subscription or transfer of <i>units</i>) other than a <i>person</i> meeting the criteria in paragraph 27E.</u>	
	<u>ACsSs: UCITS and NURS transfer of units</u>	
<u>27G</u>	<u>(1)</u>	<u>A statement whether the transfer of <i>units</i> in the <i>ACS scheme</i> is either:</u>
		<u>(a) <i>prohibited</i>; or</u>
		<u>(b) <i>allowed</i>.</u>
	<u>(2)</u>	<u>Where transfer of <i>units</i> is allowed in accordance with (1)(b), a statement that <i>units</i> may only be transferred in accordance with the conditions specified by <i>FCA rules</i>, including that <i>units</i> may not be transferred to a <i>person</i> other than a:</u>
		<u>(a) <i>professional ACS investor</i>;</u>
		<u>(b) <i>large ACS investor</i>; or</u>
		<u>(c) <i>person</i> who already holds <i>units</i> in the <i>scheme</i>.</u>
	<u>(3)</u>	<u>For a <i>co-ownership scheme</i> which is an <i>umbrella</i>, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the <i>sub-funds</i>. Where individual <i>sub-funds</i> have differing policies in relation to transfer of <i>units</i>, separate statements are required.</u>
	<u>Co-ownership schemes: constitution</u>	
<u>27H</u>	<u>For a <i>co-ownership scheme</i>, a statement that the arrangements constituting the <i>scheme</i> are intended to constitute a <i>co-ownership scheme</i> as defined in section 235A(2) of the <i>Act</i>.</u>	
	<u>Co-ownership schemes: operator's powers</u>	



<u>27I</u>	<u>A statement that the <i>operator</i> of a <i>co-ownership scheme</i> is authorised to:</u>
	(1) <u>acquire, manage and dispose of the <i>scheme property</i>; and</u>
	(2) <u>enter into contracts which are binding on <i>unitholders</i> for the purposes of, or in connection with, the acquisition, management or disposal of <i>scheme property</i>.</u>
	<u>Co-ownership schemes: winding-up</u>
<u>27J</u>	<u>A statement that the <i>operator</i> and <i>depository</i> of a <i>co-ownership scheme</i> are required to wind up the <i>scheme</i> if directed to do so by the <i>FCA</i> in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the <i>Act</i>.</u>
	<u>Limited partnership schemes: participants</u>
<u>27K</u>	<u>A statement that the <i>limited partners</i>, other than the <i>nominated partner</i>, are to be the <i>participants</i> in the <i>scheme</i>.</u>
	<u>Limited partnership schemes: resignation of limited partners</u>
<u>27L</u>	<u>A statement that the <i>scheme</i> is not dissolved on any <i>person</i> ceasing to be a <i>limited partner</i> or <i>nominated partner</i> provided that there remains at least one <i>limited partner</i>.</u>
	<u>Limited partnership schemes: inability to operate as an umbrella</u>
<u>27M</u>	<u>A statement that the <i>limited partnership scheme</i> prohibits pooling as is mentioned in section 235(3)(a) of the <i>Act</i> in relation to separate parts of the <i>scheme property</i>, with the effect that the <i>scheme</i> cannot be an <i>umbrella</i>.</u>
...	

...

### 3.3 Units

...

Switching rights: umbrella schemes

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

additional *sub-funds*, it should ensure that *unitholders* will have the right to switch at all times between two or more *sub-funds* in that *umbrella*.

...

## 4.2 Pre-sale notifications

...

Table: contents of the prospectus

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

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

Umbrella ICVCs <u>or co-ownership schemes</u>	
2A	<del>For an ICVC which is an umbrella, a statement that</del> <u>The following statements for an ICVC or a co-ownership scheme which is an umbrella:</u>
(a)	<u>for an ICVC, a statement that its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose; and</u>
(aa)	<u>for a co-ownership scheme, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund) and must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund; and</u>
(b)	<u>for an ICVC or a co-ownership scheme, a statement that while the provisions of the OEIC Regulations, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the Act in the case of co-ownership schemes, provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations or, as the case may be, section 261P of the Act.</u>
...	
Characteristics of the units	
...	
5A	<u>ACSs: UCITS and NURS eligible investors</u>
(a)	<u>A statement that units may not be issued to a person other than a:</u>
	(i) <u>professional ACS investor; or</u>
	(ii) <u>large ACS investor; or</u>
	(iii) <u>person who already holds units in the scheme.</u>
(b)	<u>A statement that the authorised contractual scheme manager must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in paragraph 5A(a).</u>

5B	<u>ACSs: UCITS and NURS transfer of units</u>	
	(a)	A statement whether the transfer of <i>units</i> in the <i>ACS scheme</i> is either:
	(i)	<u>prohibited; or</u>
	(ii)	<u>allowed;</u>
		by the <i>instrument constituting the scheme and prospectus</i> .
	(b)	Where transfer of <i>units</i> is allowed by the <i>instrument constituting the scheme and prospectus</i> in accordance with (a)(ii), a statement that <i>units</i> may only be transferred in accordance with the conditions specified by <i>FCA rules</i> , including that <i>units</i> may not be transferred to a <i>person other than a</i> :
	(i)	<i>professional ACS investor; or</i>
	(ii)	<i>large ACS investor; or</i>
	(iii)	<i>person who already holds units in the scheme.</i>
	(c)	For a <i>co-ownership scheme</i> which is an <i>umbrella</i> , a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the <i>sub-funds</i> . Where individual <i>sub-funds</i> have differing policies in relation to transfer of <i>units</i> , separate statements are required.
...		
Contracts and other relationships with parties		
11	The following relevant details:	
	...	
	(c)	...
	(ca)	<u>in the case of an ACS, a summary of the material provisions of the contracts between:</u>
	(i)	<u>the authorised fund manager and the nominated partner (if any); and</u>
	(ii)	<u>the authorised fund manager and depositary;</u>
		<u>which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;</u>
	(d)	if an <i>investment adviser</i> retained in connection with the business of the <i>authorised fund</i> is a <i>body corporate</i> in a <i>group</i> of which any

		<i>director of the ICVC or the <del>manager</del> authorised fund manager of the AUT or ACS is a member, that fact;</i>	
	...		
...			
Dealing			
17	The following particulars:		
	(a)	the procedures, the dealing periods and the circumstances in which the <i>authorised fund manager</i> will effect:	
		...	
		(ii)	any direct <i>issue or cancellation of units</i> by an <i>ICVC</i> or by the <del><i>trustee depositary</i></del> of an <i>AUT or ACS</i> (as appropriate) through the <i>authorised fund manager</i> in accordance with <i>COLL 6.2.7R(2)</i> (Issue and cancellation of units through an authorised fund manager);
	...		
...			
Marketing in another EEA state			
26	A <i>prospectus</i> of a <i>UCITS scheme</i> which is prepared for the purpose of marketing units in a <i>EEA State</i> other than the <i>United Kingdom</i> , must give details as to:		
	...		
	(b)	how the <i>ICVC</i> or the <del><i>manager</i></del> <i>authorised fund manager</i> of an <i>AUT or ACS</i> will publish in that <i>EEA State</i> notice:	
		...	
...			
Additional information			
27	Any other material information which is within the knowledge of the <i>directors</i> of an <i>ICVC</i> or the <del><i>manager</i></del> <i>authorised fund manager</i> of an <i>AUT or ACS</i> , or which the <i>directors</i> or <del><i>manager</i></del> <i>authorised fund manager</i> would have obtained by making reasonable enquiries, including but not confined to, the following matters:		

	...
--	-----

...

### 4.3 Approvals and notifications

...

Appointment of a new ~~ACD or manager~~ authorised fund manager

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

...

...

### 5.2 General investment powers and limits for UCITS schemes

Application

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

...

Table of application

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

Rule	<i>ICVC</i>	<i>ACD</i>	<del>Manager of an <i>AUT</i></del> <u>Authorised fund manager of an <i>AUT</i> or <i>ACS</i></u>	<del>Depositary of an <i>ICVC</i>, <i>AUT</i> or <i>ACS</i></del>	<del>Trustee of an <i>AUT</i></del>
...					
5.2.10R(2)(c)				x	✕

...					
5.2.22AG	x	x	x	x	✖
...					
5.2.23R(2) to (4)	x	x	x	x	✖
...					

...

Significant influence for ~~managers~~ authorised fund managers of AUTs or ACSs

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

...

UCITS schemes that are umbrellas

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

...

- (b) *COLL 5.2.28R* (Significant influence for ~~managers~~ authorised

fund managers of AUTs or ACSs);

...

**5.4 Stock lending**

...

Stock lending: requirements

5.4.4 R (1) An ICVC, or the *depository* at the request of the ICVC, or the ~~trustee~~ depository of an AUT or ACS at the request of the ~~manager~~ authorised fund manager, may enter into a *repo* contract, or a *stock lending* arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

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

...

...

...

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

Application

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

Table of application

5.5.2 R This table belongs to COLL 5.5.1R.

Rule	ICVC	ACD	<u>Manager of an AUT</u> <u>Authorised fund manager of an AUT or ACS</u>	Depository of an ICVC	<u>Trustee of an AUT</u> <u>Depository of an AUT or ACS</u>
...					

...

**5.6 Investment powers and borrowing limits for non-UCITS retail schemes**



...

## Standing independent valuer and valuation

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

...

(b) the appointment must be made with the approval of the ~~trustee or~~ *trustee or depositary* at the outset and upon any vacancy.

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

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

...

...

...

## 6.2 Dealing

...

## Purpose

6.2.2 G ...

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

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

...

...

Issue and cancellation of units in an AUT or ACS

6.2.6 R ...

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

...

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

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

(2) ...

## Controls over the issue and cancellation of units

6.2.8 R ...

(2) An *authorised fund manager* must not:

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

...

...

...

## Sale and redemption

6.2.16 R ...

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

...

Limited redemption: guidance

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

...

## 6.4 Title and registers

Application

- 6.4.1 R (1) This section applies to ~~a manager~~ an authorised fund manager and a ~~trustee~~ depository of an *AUT* or *ACS*.
- (2) ...

...

Explanation of this section

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

...

Register: general requirements and contents

- 6.4.4 R (1) Either:
- (a) the manager or the *trustee* (as nominated in the *trust deed*);  
or
- (b) the authorised contractual scheme manager or the depository of the ACS (as nominated in the *contractual scheme deed*);
- must establish and maintain a *register of unitholders* as a *document* in accordance with this section.
- (2) The *manager* or *trustee* or the authorised fund manager or depository in accordance with their duties under (1) must exercise

all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.

- (3) ...
- (4) No notice of any trust, express, implied or constructive which may be entered in the *register* is binding on the *manager* or *trustee* or the authorised fund manager or depositary, but this does not affect their obligations under *COLL* 6.4.9R(1) (Plan registers).
- (5) ...
- (6) The *person* responsible for the *register* in (1) must:
  - ...
  - (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or authorised fund manager), during office hours, but it may be closed for periods not exceeding 30 *business days* in any one year;
  - (d) ...
  - (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or authorised fund manager becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
  - (f) carry out any conversion of *units* allowed for by *COLL* 6.4.8R (Conversion of units) after consultation with the *manager* or *trustee* or the authorised fund manager or depositary, as appropriate.

The authorised fund manager as unitholder

- 6.4.5 R (1) Subject to (3), if no person is entered in the register as the unitholder of a unit, the authorised fund manager must be treated as the unitholder of each such unit which is in issue (other than a unit which is represented by a bearer certificate).
- (2) Where *units* are transferred to the authorised fund manager, they need not be *cancelled* and the authorised fund manager need not be entered on the *register* as the new *unitholder*.
- (3) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager

is not entered in the register as the new unitholder.

Transfer of units by act of parties: AUTs and ACSs

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

...

(1A) Provided:

- (a) the requirements in COLL 6.4.6AR (Transfer of units in an ACS) are satisfied; and
- (b) transfers of units are allowed by the contractual scheme deed and prospectus in accordance with the conditions specified by FCA rules;

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

- (2) Every instrument of transfer of units of an AUT or ACS must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the ~~manager~~ authorised fund manager, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (3) In the case of an AUT or ACS, every ~~Every~~ instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
- ...
- (4) In the case of an AUT or ACS, the ~~The~~ details of instruments of transfer must be kept for a period of six years from the date of its registration.
- (5) In the case of an AUT or ACS, on ~~On~~ registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

Transfer of units in an ACS

- 6.4.6A R (1) Where transfer of units in an ACS is allowed by its contractual scheme deed and prospectus in accordance with the conditions

specified by FCA rules, the authorised contractual scheme manager of the ACS must take reasonable care to ensure that units are only transferred if the conditions specified by the FCA under (2) are met.

- (2) The FCA specifies that for the purposes of (1), and for the purposes of COLL 3.2.6R(27G) (ACs: UCITS and NURS transfer of units) and COLL 4.2.5R(5B) (ACs: UCITS and NURS transfer of units), units in an ACS may only be transferred to a person that is a:
  - (a) professional ACS investor; or
  - (b) large ACS investor; or
  - (c) person who already holds units in the scheme.

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

Certificates (including bearer certificates)

- 6.4.7 R (1) Following the *sale* of units or as a result of COLL 6.4.6R (Transfer of units by act of parties: AUTs and ACSs) a document recording title to those units may be issued in such a form as the *trust deed* or *contractual scheme deed* permits.
- ...
- (3) *Bearer certificates* may only be issued for AUTs if they are permitted by the *instrument constituting the scheme*.
- (4) *Bearer certificates* may not be issued for ACSs.

...

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

...

6.5.2 R Table of application

This table belongs to COLL 6.5.1R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	Any other <i>director</i> of an <i>ICVC</i>	<i>Depositary</i> of an <i>ICVC</i>	<del><i>Manager</i></del> <u><i>Authorised fund manager</i></u> of	<del><i>Trustee</i></del> <u><i>Depositary</i></u> of an <i>AUT</i> or <u><i>ACS</i></u>
-------------	-------------	------------	---	-------------------------------------	--	--

					an <u>AUT or ACS</u>	
...						

...

Retirement of a ~~manager~~ an authorised fund manager of an AUT or ACS

- 6.5.8 R (1) The ~~manager~~ authorised fund manager of an AUT or ACS has the right to retire in favour of another *person* eligible under the *Act* and approved in writing by the ~~trustee~~ depository upon:
- (a) the retiring ~~manager~~ authorised fund manager appointing that *person* by deed as ~~manager~~ authorised fund manager in its place and assigning to that *person* all its rights and duties as such a ~~manager~~ an authorised fund manager; and
  - (b) the new ~~manager~~ authorised fund manager entering into such deeds as the ~~trustee~~ depository reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due performance of its duties as the ~~manager~~ authorised fund manager of the AUT or ACS.
- (2) Upon retirement, the retiring ~~manager~~ authorised fund manager:
- (a) subject to (3), is released from all further obligations under the *rules* in this sourcebook and under the *trust deed or contractual scheme deed*; and
  - (b) ...
- (3) Sub-paragraph (2)(a) does not affect the rights of the ~~trustee~~ depository or any other *person* in respect of any act or omission on the part of the retiring ~~manager~~ authorised fund manager before his retirement.

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

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

...

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

...

Table of application

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

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Manager Authorised fund manager of an AUT or ACS</i>	<i>Trustee Depositary of an AUT or ACS</i>
...						
<u>6.6.3AR*</u>					<u>x</u>	
<u>6.6.3BR*</u>					<u>x</u>	
...						
<u>6.6.5AR*</u>		x			<u>x</u>	
<u>6.6.5BG*</u>		x			<u>x</u>	
...						
Notes	(1)	...				
	(2)	<u>* <i>COLL</i> 6.6.3AR and <i>COLL</i> 6.6.3BR only apply to authorised contractual scheme managers of ACSs.</u>				
	(3)	<u>* <i>COLL</i> 6.6.5AR and 6.6.5BG only apply to ACDs of ICVCs which are umbrellas and authorised contractual scheme managers of co-ownership schemes which are umbrellas.</u>				
	(4)	<u>* <i>COLL</i> 6.6.15AR has a special application as set out in <i>COLL</i> 6.6.15AR(1).</u>				

Functions of the authorised fund manager

### 6.6.3 R ...

(3) The *authorised fund manager* must:

...

(c) take action immediately to rectify any breach of *COLL* 6.3



and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue* of *units*, the rectification must, (unless the *depository* otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:

...

- (iv) by the ~~manager~~ authorised fund manager to the ~~trustee~~ depository of the *AUT* or *ACS*; or
- (v) by the ~~trustee~~ depository (for the account of the *AUT* or *ACS*) to the ~~manager~~ authorised fund manager.

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

- 6.6.3A R (1) The authorised contractual scheme manager of an authorised contractual scheme which is a UCITS scheme or a non-UCITS retail scheme must take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a:
- (a) professional ACS investor; or
  - (b) large ACS investor; or
  - (c) person who already holds units in the scheme.
- (2) The authorised contractual scheme manager of an authorised contractual scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder, unless that person meets the criteria within (1)(a) to (c).
- (3) The authorised contractual scheme manager will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

#### Redemption of ACS units by an authorised contractual scheme manager

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

...

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

- 6.6.5A R Where reasonable grounds exist for an ACD of an ICVC or an authorised

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

...

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

- (1) ...
- (2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the foreign law contract.

...

Auditor: AUTs or ACSs

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

...

## 6.7 Payments

...

Table of application

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

<i>Rule</i>	<del>ICVC</del> <u>ICVC</u>	<del>ACD</del> <u>ACD</u>	<i>Depository of an ICVC<sub>2</sub></i>	<del>Manager</del> <u>Authorised fund</u>	<del>Trustee of an AUT</del>
-------------	--------------------------------	------------------------------	--	--	------------------------------

			<u>AUT or ACS</u>	<u>manager of an AUT or ACS</u>	
6.7.1R to 6.7.5G	x	x	x	x	✘
...					
6.7.10R		x	x	x	✘
6.7.11G		x	x	x	✘
...					
6.7.15R	x	x	x	x	✘
6.7.16G		x	x	x	✘
...					

...

Payment of liabilities on transfer of assets

- 6.7.15 R (1) ...
- (2) The *ICVC*, ~~its *depository*~~ or the *trustee depository* of the *ICVC*, *ACS* or *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

...

...

## 6.9 Independence, names and UCITS business restrictions

...

Independence of depositaries and scheme operators

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

*guidance.*

...

...

Undesirable or misleading names

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

...

...

Connected activities: guidance

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

...

...

**7.1 Introduction**

Application

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

...

Table of application

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

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors</i> of an	<i>Depository</i> of an <i>ICVC</i>	<u><i>Manager</i></u> <u><i>Authorised fund</i></u> <u><i>manager of an</i></u>	<u><i>Trustee</i></u> <u><i>Depository of an</i></u> <u><i>AUT or ACS</i></u>

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

### Purpose

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

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

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

#### Explanation of COLL 7.4A

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

- (3) A *sub-fund* of a *co-ownership scheme* may be terminated under this section only if it is solvent. The termination of a *sub-fund* under this section will be subject to section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary). Termination can only commence once the proposed alterations to the *contractual scheme deed* and *prospectus* have been notified to the *FCA* in writing and permitted to take effect. On termination, the assets of a *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (4) An *ACS* or a *sub-fund* of a *co-ownership scheme* may also be wound up or terminated in connection with a *scheme of arrangement*. The requirements of section 261Q also apply in relation to a proposal that an *ACS* or a *sub-fund* of a *co-ownership scheme* be involved in a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (5) *COLL 7.4A.3G* gives an overview of the main steps in winding up a solvent *ACS* or terminating a *sub-fund* of a *co-ownership scheme* under *FCA rules*, assuming *FCA approval*.

#### Special meanings in this section

- 7.4A.2 R (1) In this section, where a *sub-fund* of a *co-ownership scheme* is being terminated, references to:
- (a) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
  - (b) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
  - (c) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
  - (d) *liabilities*, are references to liabilities of the *co-ownership scheme* allocated or attributable to the *sub-fund* to be terminated.
- (2) In this section:
- (a) a “section 261Q case” refers to:
    - (i) a case where a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than in connection with a *scheme of arrangement*; or
    - (ii) a case where an *ACS* or a *sub-fund* of a *co-ownership scheme*

*scheme* is to be wound up or terminated in connection with a *scheme of arrangement*; and

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

#### Guidance on winding up or termination

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

<p>Summary of the main steps in winding up an ACS or terminating a <i>sub-fund</i> of a <i>co-ownership scheme</i> under FCA rules</p> <p>Notes: N = Notice to be given to the FCA under section 261Q of the Act in a section 261Q case.</p> <p>R = Request to wind up the <i>scheme</i> under section 261W of the Act in a section 261W case.</p> <p>E = commencement of winding up or termination</p> <p>W/U = winding up</p> <p>FAP = final accounting period</p>			
Step number	Explanation	When	COLL rule (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 <i>days</i> or R-28 <i>days</i>	7.4A.5R(2)
2	Send audited solvency statement to the FCA with copy to <i>depository</i> .	By N + 21 <i>days</i> or by R + 21 <i>days</i>	7.4A.5R(4) and (5)
3	In a section 261Q case: - the <i>authorised contractual scheme manager</i> receiving FCA approval; - or one month having passed after submitting the requisite notice under section 261Q of the Act without the <i>authorised contractual scheme manager</i> or	N + one <i>month</i> or R + one <i>month</i>	Section 261Q of the Act (in a section 261Q case)  7.4A.4R(3)(c) to (e) (in a section 261W case)

	<p><i>depository</i> having received from the <i>FCA</i> a warning notice under section 261R in respect of the proposal.</p> <p>In a section 261W case, the <i>authorised contractual scheme manager</i> or <i>depository</i> receives an indication from the <i>FCA</i> that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the <i>ACS</i>, the <i>FCA</i> will agree to the request to wind up the <i>ACS</i>.</p>		
4	Normal business ceases; notify <i>unitholders</i>	E	7.4A.4R
5	<i>Depository</i> to realise and distribute proceeds	ASAP after E	7.4A.6R(1)-(5)
6	Send annual long report of <i>authorised contractual scheme manager</i> , <i>depository</i> and auditor to the <i>FCA</i>	Within 4 <i>months</i> of FAP	7.4A.9R(7)
7	Request <i>FCA</i> to revoke relevant <i>authorisation order</i>	On completion of W/U	7.4A.6R(6)

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

- 7.4A.4 R (1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:



- (a) *COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) and COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the units and scheme property in the case of a sub-fund of a co-ownership scheme;*
  - (b) *the depositary must cease to issue and cancel units, except in respect of the final cancellation under COLL 7.4A.6R(1) or (2) (Manner of winding up or termination);*
  - (c) *the authorised contractual scheme manager must cease to sell and redeem units;*
  - (d) *the authorised contractual scheme manager must cease to arrange the issue or cancellation of units under COLL 6.2.7R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4A.6R(1) or (2);*
  - (e) *no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4R(1) (Register: general requirements and contents); and*
  - (f) *the depositary must proceed to wind up the ACS or terminate the sub-fund in accordance with COLL 7.4A.6R.*
- (2) *If the authorised contractual scheme manager has not previously notified unitholders of the proposal to wind up the ACS or terminate the sub-fund of the co-ownership scheme, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the unitholders.*
- (3) *The matters referred to in (1) are:*
- (a) *the authorisation order of the ACS is revoked;*
  - (b) *alterations to the co-ownership scheme's contractual scheme deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 261Q (Alteration of contractual schemes and changes of operator or depositary) of the Act;*
  - (c) *the passing of an extraordinary resolution winding up the ACS or terminating the sub-fund, provided the FCA's prior consent to the resolution has been obtained by the authorised contractual scheme manager or depositary;*
  - (d) *in response to a request to the FCA by the authorised contractual scheme manager or the depositary for the*

revocation of the *authorisation order*, the *FCA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *ACS*, the *FCA* will agree to that request;

- (e) the expiration of any period specified in the *contractual scheme deed* as the period at the end of which the *ACS* is to be wound up or the *sub-fund* is to terminate;
  - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the *ACS* or *sub-fund* that is subject to the *scheme of arrangement* being left with no property;
  - (g) in the case of a *co-ownership scheme* that is an *umbrella*, the date on which all or the last of its *sub-funds* fall within (f) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *co-ownership scheme* may have assets and liabilities that are not attributable exclusively to any particular *sub-fund*.
- (4) An *ACS* must not be wound up nor a *sub-fund* terminated under this section unless the requirements of both (a) and (b) are satisfied:
- (a) An *ACS* must not be wound up nor a *sub-fund* terminated under this section unless and until:
    - (i) in a section 261Q case either:
      - (A) the *FCA* has given written approval to the proposal; or
      - (B) one *month* has passed since the *authorised contractual scheme manager* gave notice under section 261Q without the *authorised contractual scheme manager* or *depository* having received from the *FCA* a warning notice under section 261R in respect of the proposal; or
    - (ii) in a section 261W case, the *FCA* indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the *ACS*, the *FCA* will agree to the request to wind up the *ACS*.
  - (b) In addition an *ACS* must not be wound up nor a *sub-fund* terminated under this section unless a statement has been prepared and sent or delivered to the *FCA* under *COLL 7.4A.5R* (Solvency statement) and received by the *FCA* prior to the satisfaction of the condition in (a).
- (5) This *rule* is without prejudice to:

- (a) *COLL 7.2.1R* (Requirement); or
- (b) any order or direction made under section 261X (Directions) or 261Y (Applications to the court) of the *Act*; or
- (c) any alternative method (aside from the *rules* in this section) of winding up a *limited partnership scheme* provided for by the law.

#### Solvency statement

- 7.4A.5 R (1) Either before notice is given under section 261Q of the *Act* or before a request is made under section 261W of the *Act* in relation to the proposals referred to in *COLL 7.4A.4R(4)*, the *authorised contractual scheme manager* must make a full inquiry into the *ACS's* (or, in the case of the termination of a *sub-fund* of a *co-ownership scheme*, the *sub-fund's*) affairs, business and property to establish whether the *ACS* or the *sub-fund* will be able to meet all its liabilities.
- (2) The *authorised contractual scheme manager* must then, based on the results of this enquiry, prepare and sign a statement either:
- (a) confirming that the *ACS* or the *sub-fund* of the *co-ownership scheme* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
  - (b) stating that such confirmation cannot be given.
- (3) This solvency statement must relate to the *ACSs* or the *sub-fund's* affairs, business and property at a date no more than 28 *days* before the date on which notice is given to the *FCA* under section 261Q or a request is made under section 261W.
- (4) A statement which contains the confirmation under (2) must annex a statement signed by the auditor of the *ACS* to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.
- (5) The solvency statement must be sent or delivered to the *FCA* and the *depository* no later than 21 *days* after notice is given to the *FCA* in accordance with section 261Q of the *Act* or the request made in accordance with section 261W of the *Act*.

#### Manner of winding up or termination

- 7.4A.6 R (1) Where *COLL 7.4A.4R(3)(f)* applies, the *depository* must *cancel* all *units* in issue and wind up the *ACS* or terminate the *sub-fund* of the *co-ownership scheme* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within *COLL 7.4A.4R*:

- (a) once the ACS falls to be wound up or *sub-fund* terminated, the *depository* 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 *depository* must *cancel* all *units* in issue and distribute the proceeds of that realisation to the *unitholders* and the *authorised contractual scheme manager* proportionately to their respective interests in the ACS or *sub-fund* as at the date, or the date of the relevant event referred to in COLL 7.4A.4R; and
  - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *depository* after one year from the date on which they became payable must be paid by the *depository* into court (or, in Scotland, as the court may direct), subject to the *depository* having a right to retain any expenses properly incurred by him relating to that payment.
- (3) For an ACS which is a *relevant pension scheme*, payments must not be made to *unitholders* in the ACS. The realisation proceeds must be paid by the *depository* in accordance with the *contractual scheme deed*.
  - (4) Where the *depository* 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 *depository* must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *depository* for ensuring that that or those *unitholders* bear a proportional share of the liabilities and costs.
  - (6) On completion of the winding up in respect of the matters referred to in COLL 7.4A.4R(3)(c) to (g), the *depository* must notify the FCA in writing and at the same time the *authorised contractual scheme manager* or *depository* must request the FCA to revoke the relevant *authorisation order*.

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

- (1) payment or adequate provision being made (by the *depository* after consulting the *authorised contractual scheme manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;

- (2) the *scheme property* being realised or distributed in accordance with *COLL 7.4A.6R(5)*; and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

#### Duty to ascertain liabilities

- 7.4A.8 R (1) The *authorised contractual scheme manager* must use all reasonable endeavours to ensure that all the liabilities of the *ACS* or the *sub-fund* of a *co-ownership scheme* are discharged before the completion of the winding up or termination.
- (2) The duty in (1) relates to all liabilities of which the *authorised contractual scheme manager*:
- (a) is, or becomes, aware before the completion of the winding up or termination; or
  - (b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.
- (3) If the *authorised contractual scheme manager* rejects any claim or liability against the *ACS* or the *sub-fund* in whole or part, the *authorised contractual scheme manager* must immediately send to the claimant written notice of its reasons for doing so.

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

- 7.4A.9 R (1) For any *annual* or *half-yearly accounting period* which begins after commencement of the winding up or termination, the *authorised contractual scheme manager* is not required to prepare a short report (*COLL 4.5.13R* (Provision of short report)), provided that it has reasonably determined that the report is not required in the interests of the *unitholders*.
- (2) The *authorised contractual scheme manager* must consult the *depository* before determining that a short report is not required in the interests of *unitholders*.
- (3) Where (1) applies, a copy of the long report must be supplied free of charge to any *unitholder* upon request.
- (4) Where (1) applies, the *authorised contractual scheme manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.
- (5) The *authorised contractual scheme manager* must send a copy of the information required by (4) to each *person* who was a *unitholder* or

the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with *COLL* 7.4A.6R(2)(b).

- (6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.
- (7) Within four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund* of the *co-ownership scheme*, the annual reports of the *authorised contractual scheme manager* and *depository* must be published and sent to the *FCA*.
- (8) The *authorised contractual scheme manager* must, on publication of the annual long report in (7), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free of charge on request.

- 7.4A.10 G (1) The effect of *COLL* 7.4A.9R(1), if exercised by the *authorised contractual scheme manager* and *depository*, is that the *authorised contractual scheme manager* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with *COLL* 4.5.14R (Publication and availability of annual and half-yearly long report).
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates to *unitholders* at six-monthly or more frequent intervals.

#### Liabilities of the authorised contractual scheme manager

- 7.4A.11 R (1) Except to the extent that the *authorised contractual scheme manager* can show that it has complied with *COLL* 7.4A.8R (Duty to ascertain liabilities), the *authorised contractual scheme manager* is personally liable to meet any liability of an *ACS* or a *sub-fund* of a *co-ownership scheme*, of which it is the *authorised contractual scheme manager*, wound up or terminated under this section (whether or not the winding up of the *ACS* or the termination of the *sub-fund* has been completed) that was not discharged before the completion of the winding up or termination.
- (2) Where winding up an *ACS*, if the proceeds of the realisation of the assets attributable or allocated to a particular *sub-fund* of an *umbrella co-ownership scheme* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *authorised contractual scheme manager* must pay to the *ACS*, for the account of that *sub-fund*, the amount of the deficit, unless and to the extent that the *authorised contractual scheme manager* can show that the deficit did not arise as a result of any failure by the *authorised contractual scheme manager* to comply with the *rules* in *COLL*.

- (3) The liabilities of the *authorised contractual scheme manager* under this *rule* create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).
- (4) The obligations of the *authorised contractual scheme manager* under this *rule* do not affect any other obligation of the *authorised contractual scheme manager* under these *rules* or the law.

## Miscellaneous

7.4A.12 R If:

- (1) during the course, or as a result, of the enquiry referred to in *COLL 7.4A.5R(1)* (Solvency statement), the *authorised contractual scheme manager* becomes of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that *rule*; or
- (2) after winding up or termination has commenced, the *authorised contractual scheme manager* becomes of the opinion that the ACS or the *sub-fund* of a *co-ownership scheme* will be unable to meet all its liabilities within twelve *months* of the date of the statement provided under *COLL 7.4A.5R(2)(a)*;

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

Amend the following as shown.

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

Explanation of this section

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

...

...

Information to be provided to the FCA

- 7.5.2 G The information referred to in *COLL 7.5.1G* is listed below:

...

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

## 7.6 Schemes of arrangement

...

Schemes of arrangement: requirements

7.6.2 R ...

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

...

## 7.7 UCITS mergers

...

UCITS Regulations 2011

7.7.6 G ...

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

...

...

## 8.1 Introduction

...



Qualified investor schemes: eligible investors

- 8.1.3 R (1) Subject to (3), The the authorised fund manager of a qualified investor scheme must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that falls into one or more of the categories set out in COLL 8 Annex 1R(Qualified Investor Scheme: eligible investors).
- (2) The authorised fund manager will be regarded as complying with (1) and (3) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.
- (3) In addition to (1), the authorised contractual scheme manager of a qualified investor scheme which is an ACS must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that meets the criteria set out in COLL 8 Annex 2R (ACS Qualified Investor Schemes: eligible investors).

Qualified investor schemes - explanation

- 8.1.4 G (1) *Qualified investor schemes are authorised funds which may only be sold to sophisticated investors. Therefore, the authorised fund manager of an AUT or an ICVC must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to the client types set out in COLL 8 Annex 1R.*
- (1A) The authorised contractual scheme manager of an ACS must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to the client types set out in both COLL 8 Annex 1R and COLL 8 Annex 2R.

...

...

**8.2 Constitution**

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to COLL 8.2.5R

...	
2	Constitution
	The following statements:
	...

	(4)	for an <i>ICVC</i> :	
		...	
		(b)	the <i>unitholders</i> are not liable for the debts of the <i>company</i> ; <del>and</del>
		...	
	(4B)	<u>for a <i>co-ownership scheme</i> which is an <i>umbrella</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>;</u>	
	(4C)	<u>for a <i>limited partnership scheme</i>, that the <i>scheme</i> prohibits pooling as is mentioned in section 235(3)(a) of the <i>Act</i> in relation to separate parts of the <i>scheme property</i>, with the effect that the <i>scheme</i> cannot be an <i>umbrella</i>;</u>	
	(5)	for an <i>AUT</i> :	
		...	
		(d)	payments to the <i>trustee</i> by way of <i>remuneration</i> are authorised to be paid (in whole or in part) out of the <i>scheme property</i> ; <u>and</u>
	(6)	for an <i>ACS</i> :	
		(a)	<u>the <i>contractual scheme deed</i>:</u>
		(i)	<u>is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;</u>
		(ii)	<u>is binding on each <i>unitholder</i> as if he had been a party to it and that he is bound by its provisions;</u>
		(iii)	<u>authorises and requires the <i>depository</i> and the <i>authorised contractual scheme manager</i> to do the things required or permitted of them by its terms; <u>and</u></u>
		(iv)	<u>states that <i>units</i> may not be <i>issued</i> to a <i>person</i> other than a <i>person</i> that:</u>
		(A)	<u>is a:</u>
		(i)	<u><i>professional ACS investor</i>;</u>

				(ii)	<u>large ACS investor; or</u>
				(iii)	<u>person who already holds units in the scheme; and</u>
			(B)	<u>falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors);</u>	
			(v)	<u>states that the authorised contractual scheme manager of an ACS must redeem units as soon as practicable after becoming aware that those units are vested in anyone (whether as a result of subscription or transfer of units) other than a person meeting the criteria in (iv)(A) and (B);</u>	
			(vi)	<u>states that for a co-ownership scheme:</u>	
			(A)	<u>the scheme property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants);</u>	
			(B)	<u>the arrangements constituting the scheme are intended to constitute a co-ownership scheme as defined in section 235A(2) of the Act; and</u>	
			(C)	<u>the operator and depositary are required to wind up the scheme if directed to do so by the FCA in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the Act;</u>	
			(vii)	<u>states:</u>	
			(A)	<u>whether the transfer of units in the ACS scheme or, for a co-ownership scheme which is an umbrella (sub-funds of which pursue differing policies in relation to transfer of units), in each particular sub-fund, is either:</u>	
				(i)	<u>prohibited; or</u>
				(ii)	<u>allowed;</u>
			(B)	<u>where transfer of units is allowed by the scheme or, where appropriate the sub-fund, in accordance with (A)(ii), units</u>	

					<u>may only be transferred in accordance with the conditions specified by <i>FCA rules</i>, including that <i>units</i> may not be transferred to a <i>person</i> other than a <i>person</i> that:</u>	
					<u>(i)</u>	<u>is a:</u>
					<u>(1)</u>	<u><i>professional ACS investor</i>; or</u>
					<u>(2)</u>	<u><i>large ACS investor</i>; or</u>
					<u>(3)</u>	<u><i>person</i> who already holds <i>units</i> in the <i>scheme</i>; and</u>
					<u>(ii)</u>	<u>falls within one or more of the categories set out in <i>COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors)</i>; and</u>
			<u>(viii)</u>	<u>states that for a <i>limited partnership scheme</i>, the <i>scheme</i> is not dissolved on any <i>person</i> ceasing to be a <i>limited partner</i> or <i>nominated partner</i> provided that there remains at least one <i>limited partner</i>;</u>		
		<u>(b)</u>	<u>subject to the provisions of the <i>contractual scheme deed</i> and all the <i>rules</i> made under section 261I of the <i>Act</i> (<i>Contractual scheme rules</i>) and for the time being in force:</u>			
			<u>(i)</u>	<u>the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by, or to the order of, the <i>depository</i> for and on behalf of the <i>unitholders</i> according to the number of <i>units</i> held by each <i>unitholder</i> or, where relevant, according to the number of individual shares in the <i>scheme property</i> represented by the <i>units</i> held by each <i>unitholder</i>; and</u>		
			<u>(ii)</u>	<u>the sums standing to the credit of any <i>distribution account</i> are held by the <i>depository</i> to distribute or apply them in accordance with <i>COLL 8.5.15R (Income)</i>; and</u>		
		<u>(c)</u>	<u>a <i>unitholder</i> in a <i>co-ownership scheme</i> is not liable to make any further payment after he has paid the price of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> he holds;</u>			
		<u>(d)</u>	<u>a <i>unitholder</i> in a <i>limited partnership scheme</i> is not liable for</u>			

			<u>the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised contractual scheme manager</i> to meet such debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business;</u>
		(e)	<u>the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business;</u>
		(f)	<u>the <i>limited partners</i>, other than the <i>nominated partner</i>, are to be the <i>participants</i> in the <i>scheme</i>; and</u>
		(g)	<u>the <i>operator</i> of a <i>co-ownership scheme</i> is authorised to:</u>
		(i)	<u>acquire, manage and dispose of the <i>scheme property</i>;</u> <u>and</u>
		(ii)	<u>enter into contracts which are binding on <i>unitholders</i> for the purposes of, or in connection with, the acquisition, management or disposal of <i>scheme property</i>.</u>
...			

...

### 8.3 Investor relations

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL* 8.3.2R

...		
2	Description of the authorised fund	
	Information detailing:	
...		
	(2)	that the <i>authorised fund</i> is either an <i>ICVC</i> , <u><i>ACS</i></u> or an <i>AUT</i> ;
	...	
	(8)	where relevant, the maximum and minimum sizes of the <i>ICVC</i> 's capital; <del>and</del>
	(9)	the circumstances in which the <i>authorised fund</i> may be wound up

		under the <i>rules</i> in <i>COLL</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up; and	
	(10)	for an <i>ACS</i> that is a <i>limited partnership scheme</i> , the address of the proposed principal place of business of the <i>limited partnership scheme</i> .	
	...		
5A	Issue of units in <i>ACS</i> s: eligible investors		
	(1)	A statement that <i>units</i> may not be issued to a person other than to a person who:	
		(a)	is a:
		(i)	<i>professional ACS investor</i> ; or
		(ii)	<i>large ACS investor</i> ; or
		(iii)	person who already holds <i>units</i> in the <i>scheme</i> ; and
		(b)	falls within one or more of the categories set out in <i>COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors)</i> .
	(2)	A statement that the <i>authorised contractual scheme manager</i> of an <i>ACS</i> must <i>redeem units</i> as soon as practicable after becoming aware that those <i>units</i> are vested in anyone (whether as a result of subscription or transfer of <i>units</i> ) other than a person meeting the criteria in (1).	
5B	Transfer of units in <i>ACS</i> s		
	(1)	A statement whether the transfer of <i>units</i> in the <i>ACS scheme</i> is either:	
		(a)	prohibited; or
		(b)	allowed;
		by the <i>instrument constituting the scheme</i> and prospectus.	
	(2)	A statement that where transfer of <i>units</i> is allowed by the <i>instrument constituting the scheme</i> and <i>prospectus</i> in accordance with (1)(b), <i>units</i> may only be transferred in accordance with the conditions specified by <i>FCA rules</i> , including that <i>units</i> may not be transferred to a person other than a person that:	
		(a)	is a:
		(i)	<i>professional ACS investor</i> ; or

		(ii)	<u>large ACS investor; or</u>
		(iii)	<u>person who already holds units in the scheme; and</u>
		(b)	<u>falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).</u>
	(3)	<u>For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the sub-funds. Where individual sub-funds have differing policies in relation to transfer of units, separate statements are required.</u>	
6	The authorised fund manager		
	The following particulars of the <i>authorised fund manager</i> :		
	...		
	(8)	for an <i>AUT</i> or <i>ACS</i> , the names of the <i>directors</i> of the <i>manager authorised fund manager</i> .	
	...		
13	Dealing		
	Details of:		
	...		
	(9)	the circumstances in which direct <i>issue</i> or <i>cancellation</i> of <i>units</i> by the <i>ICVC</i> or the <i>trustee depositary</i> of an <i>AUT</i> or <i>ACS</i> (as appropriate) may occur and the relevant procedures for such <i>issues</i> and <i>cancellations</i> ; and	
	...		
...			
17	Information on the umbrella		
	In the case of a <i>scheme</i> which is an <i>umbrella</i> , the following information:		
	...		
	(5)	for an <i>ICVC</i> or a <i>co-ownership scheme</i> , that:	
		(a)	<u>for an <i>ICVC</i>, its <i>sub-funds</i> are segregated portfolios of assets and, accordingly, the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims</u>

			against, any other <i>person</i> or body, including the <i>umbrella</i> , or any other <i>sub-fund</i> , and shall not be available for any such purpose; <del>and</del>
		(aa)	<u>for a <i>co-ownership scheme</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the <i>participants</i> in that <i>sub-fund</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>) and must not be used to discharge any liabilities of, or meet any claims against, any <i>person</i> other than the <i>participants</i> in that <i>sub-fund</i>; and</u>
		(b)	<u>for an <i>ICVC</i> or a <i>co-ownership scheme</i>, while the provisions of the <i>OEIC Regulations</i>, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the <i>Act</i> in the case of <i>co-ownership schemes</i>, provide for segregated liability between <i>sub-funds</i>, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under <i>foreign law contracts</i>, it is not yet known how those foreign courts will react to regulations 11A and 11B of the <i>OEIC Regulations</i> or, as the case may be, section 261P of the <i>Act</i>.</u>
		...	
18B	Information on authorised contractual schemes		
	<u>A statement that:</u>		
	(1)		<u>a <i>unitholder</i> in a <i>co-ownership scheme</i> is not liable to make any further payment after he has paid the price of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> he holds;</u>
	(2)		<u>a <i>unitholder</i> in a <i>limited partnership scheme</i> is not liable for the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised contractual scheme manager</i> to meet such debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business;</u>
	(3)		<u>the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business; and</u>
	(4)		<u>the <i>scheme property</i> of a <i>co-ownership scheme</i> is beneficially owned by the <i>participants</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i>).</u>
19	Additional information		



<p>Any other material information which is within the knowledge of <del>the</del> <u>the directors</u> of an <i>ICVC</i> or the <del>manager</del> <u>authorised fund manager</u> of an <i>AUT</i> or <i>ACS</i>, or which the <i>directors</i> or <del>manager</del> <u>authorised fund manager</u> 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 <i>prospectus</i>, for the purpose of making an informed judgement about the merits of investing in the <i>authorised fund</i> and the extent and characteristics of the risks accepted by so participating.</p>
--

...

## 8.5 Powers and responsibilities

...

Functions of the authorised fund manager

8.5.2 R ...

(3) The *authorised fund manager* must:

...

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

...

(iv) by the ~~manager~~ authorised fund manager of the *AUT* or *ACS* to the ~~trustee~~ depository; or

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

...

...

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

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

manager of the co-ownership scheme must:

...

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

- (1) ...
- (2) causing the ICVC or the authorised contractual scheme manager on behalf of the co-ownership scheme to exit the *foreign law contract*.

...

The register of unitholders: AUTs or ACSs

- 8.5.8 R (1) The ~~manager~~ authorised fund manager or the ~~trustee~~ depository of an AUT or ACS (in accordance with their responsibilities as set out in the *instrument constituting the scheme*) must maintain a *register of unitholders* as a *document* in accordance with this *rule*.
- (2) ...
- (3) The ~~manager~~ authorised fund manager or the ~~trustee~~ depository of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the ~~manager~~ authorised fund manager must immediately notify the ~~trustee~~ depository of the AUT or ACS of any information he receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a limited partnership scheme, unregistered units may be held by the authorised contractual scheme manager as the agent for the scheme provided the authorised contractual scheme manager is not entered in the register as the new unitholder.

...

Issues and cancellations of units

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

...

Transfer of units in an ACS

- 8.5.10B R (1) Where transfer of *units* in an ACS is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the ACS must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of *COLL 8.2.6R(2)(6)(a)(vii)(B)* (Table: contents of the instrument constituting the scheme) and *COLL 8.3.4R(5B)(2)* (Table: contents of qualified investor scheme prospectus), *units* in the ACS may only be transferred to a *person* that:
- (a) is a:
- (i) *professional ACS investor*; or
- (ii) *large ACS investor*; or
- (iii) *person* who already holds *units* in the *scheme*; and
- (b) falls within one or more of the categories set out in *COLL 8 Annex 1R* (Qualified Investor Schemes: eligible investors).
- 8.5.10C G The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under *COLL 8.5.10ER* (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those *units*.

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

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

- (iii) person who already holds units in the scheme; and
- (b) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).
- (2) The authorised contractual scheme manager will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

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

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

...

**8 Annex 1R Qualified Investor Schemes: eligible investors**

...

**8 Annex 2R ACS Qualified Investor Schemes: eligible investors**

This Annex belongs to COLL 8.1.3R and 8.1.4R.

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

- (1) is a:
  - (a) professional ACS investor; or
  - (b) large ACS investor; or
  - (c) person who already holds units in the scheme; and
- (2) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).

...

**11.1 Introduction**

Application

- 11.1.1 R This chapter applies to:

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

...

(4) a ~~trustee~~ *depository* of an *AUT, ACS* or a ~~depository~~ of an *ICVC*;

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

Table of application

11.1.2 R This table belongs to *COLL 11.1.1 R*

Reference	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors</i> of an <i>ICVC</i>	<i>Manager</i> <u><i>Authorised fund manager of an AUT or ACS</i></u>	<del><i>Trustee of an AUT or depository</i></del> <u><i>Depository of an ICVC, AUT or ACS</i></u>
...					

...

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

...

Obligations of the master UCITS

...

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

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

...

### 11.4 Depositories

...

Disclosure by a trustee or depository

11.4.5 G Section 351A (Disclosure under the *UCITS directive*) of the *Act* provides that where a *trustee* of an *AUT* or the *depository of an ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS*

*Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.

...

## 11.6 Winding up, merger and division of master UCITS

Explanation

- 11.6.1 G (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the *Act*, in implementation of article 60 of the *UCITS Directive*, ~~provides~~ provide that where a *master UCITS* is wound up, for whatever reason, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the authorised contractual scheme manager and depositary of any ACS which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) ...
- (b) the *FCA* approves under section 252A or section 261S (Proposal to convert to a non-feeder UCITS) of the *Act* an amendment of the *trust deed* or contractual scheme deed of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A(3) and (4) and section 261Z(3) and (4) of the *Act* further ~~provides~~ provide that where a *master UCITS* merges with another *UCITS* or is divided into two or more *UCITS*, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the authorised contractual scheme manager and depositary of any ACS which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) ...
- (b) the *FCA* approves under section 252A or section 261S of the *Act* an amendment of the *trust deed* or contractual scheme deed of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.

...

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

- 11.6.2 R (1) ...
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding

the compulsory liquidation of *AUTs*, *ACSs* or *ICVCs*.

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

...

Conditions on reinvestment of cash

11.6.10 R Where:

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

...

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

...

## 12.1 Introduction

...

Purpose

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

...

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

...

...

## 12.3 EEA UCITS management companies

Application

12.3.1 R This section applies to an *EEA UCITS management company* that provides *collective portfolio management* services in the *United Kingdom* by acting as

the ~~manager~~ authorised fund manager of an AUT, ACS or ~~the ACD~~ of an ICVC which is a UCITS scheme, either by establishing a branch or under the freedom to provide cross border services.

Purpose

- 12.3.2 G (1) An *EEA UCITS management company* may be the ~~manager~~ authorised fund manager of an AUT or ACS, or the ACD of an ICVC, that is a UCITS scheme (see *SUP 13A* (Qualifying for authorisation under the Act)).
- (2) An *EEA UCITS management company* that acts as the ~~manager~~ authorised fund manager of an AUT or ACS, or the ACD of an ICVC, that is a UCITS scheme may conduct its business from a branch in the *United Kingdom* or under the freedom to provide cross border services (without establishing a branch in the *United Kingdom*).

...

...

## 12.4 UCITS product passport

...

Reference to the scheme's legal form

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

[**Note:** article 96 of the *UCITS Directive*]

...

## Schedule 2 Notification requirements

### 2.1 G

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



2.2

G

Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL 7.4.5R(5)</i>	...			
<u><i>COLL 7.4A.5R(5)</i></u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme (Authorised contractual scheme manager)</u>	<u>Solvency statement</u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme</u>	<u>Within 21 days of notice under section 261Q of the Act or within 21 days of request under section 261W of the Act.</u>
<u><i>COLL 7.4A.6R(6)</i></u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme (Depositary)</u>	<u>Completion of winding up</u>	<u>Winding up</u>	<u>Immediate</u>
<u><i>COLL 7.4A.9R(7)</i></u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme</u>	<u>Annual reports of authorised contractual scheme manager and depositary</u>	<u>End of final accounting period</u>	<u>Four months</u>
...				

...

**Schedule 6** Rules that can be waived

6.1

G	1. The rules in <i>COLL</i> can be waived by the FCA under sections 138A and 138B, or 250 or 261L of the Act (Modification or waiver of rules) or regulation 7 of the <i>OEIC Regulations</i> (Modification or waiver of FCA
---	--

	rules), except <i>COLL</i> 3.2.8R (UCITS obligations) and <i>COLL</i> 6.9.9 <u>R</u> (Restrictions of business for UCITS management companies).
--	---

...

## Annex L

### Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

#### 9 Annex 1R THE MODEL CODE (R)

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

R Table: The Model Code

...		
	Dealings not subject to the provisions of this code	
2	The following dealings are not subject to the provisions of this code:	
	...	
	(n)	a dealing by a restricted person in the units of an authorised unit trust <u>or authorised contractual scheme</u> or in shares in an <i>open-ended investment company</i> ; and
	...	
...		

...

#### Appendix 1.1 Relevant definitions

...	
<i>unrecognised scheme</i>	a <i>collective investment scheme</i> which is neither a <i>recognised scheme</i> nor a scheme that is constituted as an <i>authorised unit trust scheme</i> <u>or an authorised contractual scheme</u> .
...	

...

## Annex M

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

In this Annex, underlining indicates new text.

#### 5.1 Notification of the acquisition or disposal of major shareholdings

...

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

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

...

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

...

(ia) an authorised contractual scheme;

...

...

...

## Annex N

## Amendments to the Enforcement Guide (EG)

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

## 14 Collective Investment Schemes

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

## 14.1 ...

- (1) The seriousness of the breach or likely breach by ~~a manager~~ an authorised fund manager or ~~trustee~~ depository of a requirement imposed by or under the *Act*. The following may be relevant:
  - (a) ...
  - (b) the extent of loss, or risk of loss, caused to existing, past or potential participants in the *AUT* or ACS as a result of the *breach*;
  - (c) whether the *breach* highlights serious or systemic weaknesses in the management or control of either the *AUT*, ACS or *scheme property*;
  - ...
  - (f) whether existing and/or past participants in the *AUT* or ACS have been misled in a material way, for example about the investment objectives or policy of the *scheme* or the level of investment risk.
- (2) The consequences of a failure to satisfy a requirement for the making of an order authorising an *AUT* or ACS. The *FCA* will expect the non-compliance to be resolved as soon as possible. Important factors are likely to be whether existing and/or past *participants* have suffered loss due to the non-compliance and whether remedial steps will be taken to satisfy all the requirements of the order.
- (3) Whether it is necessary to suspend the issue and redemption of units to protect the interests of existing or potential *participants* in the *AUT* or ACS. For example, this may be necessary if:
  - (a) information suggests the current price of units under the *AUT* or ACS may not accurately reflect the value of *scheme property*; or
  - ...

- (4) The effect on the interests of *participants* within the scheme of the use of ~~either or both~~ any of its powers under sections 254, ~~and~~ 257, 261U and 261X. However, the *FCA* will also consider the interests of past and potential *participants*.
- (5) Whether the *FCA*'s concerns can be resolved by taking enforcement action against the ~~manager~~ authorised fund manager and/or ~~trustee~~ depository of the *AUT* or *ACS*. In some instances, the *FCA* may consider it appropriate to deal with a *breach* by a ~~manager~~ an authorised fund manager or ~~trustee~~ depository by taking direct enforcement action against the ~~manager~~ authorised fund manager and/or ~~trustee~~ depository without using its powers under sections 254, 257, ~~or~~ 258, 261U, 261X or 261Y. In other instances, the *FCA* may combine direct enforcement action against a ~~trustee~~ depository and/or ~~manager~~ authorised fund manager with the use of one or more of the powers under sections 254, 257, ~~and~~ 258, 261U, 261X or 261Y.
- (6) Whether there is information to suggest that a ~~trustee~~ depository or ~~manager~~ authorised fund manager has knowingly or recklessly given the *FCA* false information. Giving false information is likely to cause very serious concerns, particularly if it shows there is a risk of loss to the *scheme property* or that *participants*' interests have been or may be affected in some other way.
- (7) The conduct of the ~~manager~~ authorised fund manager or ~~trustee~~ depository in relation to, and following the identification of, the issue, for example:
- (a) whether the ~~manager~~ authorised fund manager or ~~trustee~~ depository discovered the issue or problem affecting the *AUT* or *ACS* and brought it to the *FCA*'s attention promptly;
  - (b) the degree to which the ~~manager~~ authorised fund manager or ~~trustee~~ depository is willing to cooperate with the *FCA*'s investigation and to take protective steps, for example by suspending the issue and redemption of units in the *AUT* or *ACS*;
  - (c) whether the ~~manager~~ authorised fund manager or ~~trustee~~ depository has compensated past and existing *participants* who have suffered loss.
- (8) The compliance history of the ~~trustee~~ depository or ~~manager~~ authorised fund manager, including whether the *FCA* has previously taken disciplinary action against the ~~trustee~~ depository or ~~manager~~ authorised fund manager in relation to the *AUT*, *ACS* or any other *collective investment scheme*.
- (9) Whether there is information to suggest that the *AUT* or *ACS* is being used for criminal purposes and/or that the ~~manager~~ authorised fund manager or ~~trustee~~ depository is itself involved in *financial crime*.

### Choice of powers

14.2 The *FCA* may use its powers under sections 254, 257 and 258 (in the case of

AUTs) and sections 261U, 261X and 261Y (in the case of ACSs) individually, together, and as well as direct enforcement action against a ~~trustee~~ depository or ~~manager~~ authorised fund manager in their capacity as *firms*.

- 14.3 Where the *FCA* has a concern about an AUT or ACS that must be dealt with urgently, it will generally use its power to give directions under section 257 (in the case of an AUT) or section 261X (in the case of an ACS) in the first instance.
- 14.4 The following are examples of situations where the *FCA* may consider it appropriate to seek a court order under section 258 (in the case of an AUT) or section 261Y (in the case of an ACS) to remove the ~~manager~~ authorised fund manager or ~~trustee~~ depository:
- (1) Where there are grounds for concern over the behaviour of the ~~manager~~ authorised fund manager or ~~trustee~~ depository in respect of the management of the *scheme* or of its assets.
  - (2) Where a ~~manager~~ an authorised fund manager or ~~trustee~~ depository has breached a requirement imposed on him under the *Act* or has knowingly or recklessly given the *FCA* false information.
- 14.5 The *FCA* recognises that participants in an AUT or ACS have a direct financial interest in the *scheme property*. It follows that in cases where it considers it appropriate to use its section 254 power (in the case of an AUT) or its section 261U power (in the case of an ACS) to revoke an authorisation order, the *FCA* will generally first require the ~~manager~~ authorised fund manager or ~~trustee~~ depository to wind up the AUT or ACS (or seek a court order for the appointment of a firm to wind up the AUT or ACS).

...

## 15 Disqualification of auditors and actuaries

- 15.1 Auditors and *actuaries* fulfil a vital role in the management and conduct of *firms*, ~~and~~ AUTs and ACSs. Provisions of the *Act*, *rules* made under the *Act* and the *OEIC Regulations 2000* impose various duties on auditors and *actuaries*. These duties and the *FCA*'s power to disqualify auditors and *actuaries* if they breach them assist the *FCA* in pursuing its *statutory objectives*. The *FCA*'s power to disqualify auditors in breach of duties imposed by trust scheme rules or contractual scheme rules also ~~assist~~ assists the *FCA* to achieve these *statutory objectives* by ensuring that auditors fulfil the duties imposed on them by these *rules*.

...

**Disqualification of auditors and actuaries under its powers contained in section 345, and section 249 and section 261K of the Act: the *FCA*'s general approach**

...

- 15.4 In cases where the nature of the breach of duties imposed on the auditors and *actuaries* under the *Act* (and/or in the case of actuaries imposed by *trust scheme rules* or *contractual scheme rules*) is such that the *FCA* has concerns about the fitness and propriety of an individual auditor or *actuary*, the *FCA* will consider whether it is appropriate to make a *prohibition order* instead of, or in addition to, disqualifying the individual.

...

#### **Disqualification under section 249 or section 261K**

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

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: the *FCA* will regard as particularly serious a breach of a duty imposed by *trust scheme rules* or *contractual scheme rules* (set out in *COLL 4* (Investor relations) and *COLL 7* (Suspension of dealings and termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) action taken by the auditor to remedy its breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: this may include any steps taken by the auditor to bring the breach to the attention of the *FCA* promptly, the degree of co-operation with the *FCA* in relation to any subsequent investigation, and whether any steps have been taken to rectify the breach or prevent a similar breach;
- (3) action taken by a relevant professional body: The *FCA* will consider whether any disciplinary action has or will be taken against the auditor by a relevant professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*;

...

...

#### **The Open-Ended Investment Companies Regulations 2001**

...

- 19.25 Factors that the *FCA* may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in *EG 14.1* in the context of *AUTs* or *ACSs*. However, the relevant conduct will be that of the *ICVC*, the *director* or *directors* of the *ICVC* and its



*depository*. Another difference is that the *FCA* is also able to take disciplinary action against the *ICVC* itself since the *ICVC* will be an *authorised person*. When choosing which powers to use, the *FCA* will adopt an approach which is broadly similar to that described in *EG* 14.2 to 14.5.

## Annex O

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 2.6 Specified investments: a broad outline

...

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

...

#### 2.7 Activities: a broad outline

...

Establishing etc collective investment schemes

...

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

(1) ...

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

...

(4) ...

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

...

...

2 Annex 2G Regulated activities and the permission regime

...

2 Table

<b>Table 1: Regulated Activities (excluding PRA-only activities)</b> [See note 1 to Table 1]	
<b>Regulated activity</b>	<b>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</b>
...	
<b>Designated investment business</b> [see notes 1A, 1B and 1C to Table 1]	
...	
... (n) ... <i>(na) acting as the depositary of an authorised contractual scheme (article 51)</i>	[see note 5 to Table 1]
...	

3 Table

Notes to Table 1
Note 1: ... • <i>acting as trustee of an authorised unit trust scheme (article 51(1)(b));</i> • <i>acting as the depositary of an authorised contractual scheme (article 51(1)(bb));</i> ...
...

...

8.4 Invitation or inducement

...

Directory listings

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

...

## 8.20 Additional restriction on the promotion of collective investment schemes

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

(1) ...

(1A) an authorised contractual scheme; or

...

...

- 8.20.3 G (1) The Treasury has made an order under section 238(6). This is the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (as amended by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2001 (SI 2001/2633), by articles 7 to 10 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157) ~~and~~, by article 3 of the Financial Services and Markets Act 2000 (Financial Promotion and Promotion of Collective Investment Schemes) (Miscellaneous Amendments) Order 2005 (SI 2005/270) ('the CIS Financial Promotion Order') and by regulation 10 of The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.
- (2) The overall effect of the CIS Financial Promotion Order is to ensure that *authorised persons* are able to promote an *unregulated collective investment scheme* at least as widely as an *unauthorised person* is allowed to do under section 21 without needing the approval of an *authorised person*. In general terms, the order contains exemptions equivalent to those in the *Financial Promotion Order* which are relevant to *units* in an *unregulated collective investment scheme*. *Guidance in PERG 8* relating to exemptions in the *Financial Promotion Order* will apply equally to those exemptions where they appear

in the CIS Financial Promotion Order. The main exception to this relates to the exemption for one-off *financial promotions* in article 15 of the CIS Financial Promotion Order. That article provides conditions which, if met, are conclusive proof that a *financial promotion* is one-off. However, these do not include the condition that the identity of the product or service must be determined having regard to the recipient's circumstances (see *PERG 8.14.3G(2)* and *PERG 8.14.4G(2)*).

...

### 8.33 Introducing

...

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

...

### 9.10 Significance of being an open-ended investment company

...

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

...

(2) *authorised unit trust schemes*; ~~and~~

(2A) *authorised contractual schemes*; and

...

...

### 10.2 General issues

...

#### Q4. What kind of investments do these regulated activities relate to?

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

...

### 10.3 Pension Scheme Trustees

...

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

You can make:

...

(3) day-to-day decisions about investment in pooled investment products, namely:

- *collective investment schemes* such as unit trusts, contractual schemes, limited partnerships, hedge funds or open-ended investment companies;

...

...

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

This will arise where the decision:

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

...

...

### 10.4 Pension scheme service providers other than trustees

...

**Q34. When will regulated activities form a necessary part of my pension administration services so that I can use the exclusion in article 67?**

...

So, the exclusion cannot apply to you if you are providing a service that involves assisting in the conclusion or the administration and performance of *contracts of insurance*. But it may apply where you are providing other services relating to contracts of insurance (for example, arranging post-conclusion transactions such as surrenders or switches) or to other investments such as shares, ~~or~~ unit trusts or contractual schemes.

...

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

...

...

## 11.2 Guidance on property investment clubs

...

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

... The property investment club itself would not be regulated by the FCA as a product in the way that authorised unit trusts, authorised contractual schemes or authorised open-ended investment companies (which are collective investment schemes) are. ...

...

## 12.2 Establishing, operating or winding up a personal pension scheme

**Q2. What is a personal pension scheme for the purposes of this regulated activity?**

...

This will include *self-invested personal pension schemes* ('SIPPs') as well as personal pensions provided to consumers by product companies such as insurers, unit trust managers, contractual scheme managers or deposit takers (including free-standing voluntary contribution schemes).

...

...

## 13.2 General

...

**Q6. We are a UCITS management company that, in addition to managing unit trusts, contractual schemes and investment companies, provides portfolio management services to third parties. How does MiFID apply to us?**

...