

Consultation Paper

# CP12/5

Financial Services Authority

## Quarterly consultation

(No. 32)

March 2012



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The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapter 2 of this CP should reach us by 6 April 2012 and Chapters 3 to 8 of this CP should reach us by 6 May 2012.

Comments may be sent by electronic submission using the form on the FSA's website at [www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp12\\_05\\_response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp12_05_response.shtml). You can also respond by email: [cp12\\_05@fsa.gov.uk](mailto:cp12_05@fsa.gov.uk)

If you wish to respond by letter, please send your comments to the person named at the end of each chapter and set out below:

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If you are responding in writing to several chapters, please send your comments to Roslyn Anderson in Communications, who will pass your response on as appropriate.

All responses to the above people should be sent to:  
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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

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Copies of this Consultation Paper are available to download from our website – [www.fsa.gov.uk](http://www.fsa.gov.uk). Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

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# Abbreviations used in this paper

<b>ABI</b>	Association of British Insurers
<b>ACD</b>	authorised corporate director
<b>ACS</b>	authorised contractual schemes
<b>AFM</b>	authorised fund manager
<b>AMPS</b>	Association of Member-Directed Pension Schemes
<b>AUT</b>	authorised unit trust
<b>BCD</b>	Banking Consolidation Directive
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms
<b>CAD</b>	Capital Adequacy Directive
<b>CBA</b>	cost benefit analysis
<b>COBS</b>	Conduct of Business sourcebook
<b>COLL</b>	Collective Investment Schemes sourcebook
<b>CP</b>	Consultation Paper
<b>CQ</b>	Supplementary analysis of the quarterly return
<b>CRD3</b>	Capital Requirements Directive III
<b>CREDS</b>	Credit Unions New sourcebook
<b>CTP</b>	correlation trading portfolio

<b>CY</b>	Supplementary analysis of the annual return
<b>DISP</b>	Dispute Resolution sourcebook
<b>DTR</b>	Disclosure Rules and Transparency Rules
<b>DWP</b>	Department of Work and Pensions
<b>EIS</b>	Enterprise Investment Scheme
<b>FOS</b>	Financial Ombudsman Service
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>ICVC</b>	investment company with variable capital
<b>ILAS</b>	individual liquidity adequacy standards
<b>KFI</b>	key features illustration
<b>LR</b>	Listing Rules
<b>NURS</b>	non-UCITS retail schemes
<b>OEIC</b>	open-ended investment company
<b>QIS</b>	qualified investor schemes
<b>RDR</b>	Retail Distribution Review
<b>RIY</b>	reduction in yield
<b>SDRT</b>	Stamp Duty Reserve Tax
<b>SFM</b>	supervisory formula method
<b>SIPPs</b>	Self-invested personal pensions
<b>SMPI</b>	statutory money purchase illustrations
<b>SRT</b>	significant risk transfer
<b>SUP</b>	Supervision manual
<b>TC</b>	Training and Competence sourcebook
<b>UCITS</b>	undertakings for collective investment in transferable securities
<b>UKLA</b>	United Kingdom Listing Authority

# 1

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## Overview

- 1.1** In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. It proposes amendments:
- to the qualification standards that advisers have to meet as part of the Retail Distribution Review (RDR) (Chapter 2);
  - to clarify the liquidity rules in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and the liquidity reporting rules in the Supervision manual (SUP) (Chapter 3);
  - to implement the Significant Risk Transfer (SRT) into the trading book, to ensure that firms comply with the SRT requirements (Chapter 4);
  - to increase consumer protection for self-invested personal pensions (SIPPs) by modifying pension scheme disclosures in the Conduct of Business sourcebook (COBS) (Chapter 5);
  - to achieve a single regulatory regime for all credit unions in the UK by making minor amendments to the Credit Unions New sourcebook (CREDS) (Chapter 6);
  - to clarify when related party relationships arise between issuers and investment banks undertaking certain transactions, where shares are held for a short period and to cease providing individual guidance on a ‘no names’ basis (Chapter 7); and
  - to the Collective Investment Schemes sourcebook (COLL) and other areas of the Handbook to allow the FSA to authorise another two legal forms of collective investment scheme: a co-ownership scheme and a limited partnership scheme (Chapter 8).
- 1.2** Comments on Chapters 3 to 8 of this CP should reach us by 6 May 2012 and comments on Chapter 2 of this CP should reach us by 6 April 2012.

## **CONSUMERS**

The proposals in Chapters 5 and 6 may be of interest to consumers.

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# 2

## Changes to the Training and Competence sourcebook

### Introduction

- 2.1 This chapter proposes amendments to the Training and Competence sourcebook (TC), which will add a qualification to the appropriate qualification list.
- 2.2 We confirmed in PS10/18<sup>1</sup> and PS11/1<sup>2</sup> that TC includes qualification requirements for individuals carrying out certain retail activities. Requiring individuals to be qualified is one way of securing an appropriate degree of protection for retail consumers.
- 2.3 This list is published in Appendix 4E of TC. We said that we would consult for one month each time a qualification was added, removed or other changes were made to the list.
- 2.4 These amendments, if approved will be made under section 138 (General rule-making power), section 149 (Evidential provisions), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA).
- 2.5 This chapter will be of interest to firms and individuals who are subject to our TC requirements including where our professionalism requirements under the RDR apply. The proposed Handbook text can be found in Appendix 2.

### Proposed amendments

- 2.6 In TC Appendix we propose to add ‘CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research) Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on packaged

1 PS10/18, *Feedback to CP10/12 Competence and ethics and final rules*, (December 2010).

2 PS11/1, *Distribution of retail investments: Delivering the RDR-professionalism Feedback to CP10/14 and CP10/22 and final rules*, (January 2011).

products' to the activity of advising on Packaged Products (which are not broker funds) and Friendly Society tax-exempt policies. We have assessed this qualification and consider it meets the full qualification requirement up to and after 1 January 2013 under our RDR proposals.

### **Cost benefit analysis**

- 2.7 Section 155 of FSMA requires us to perform a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal to add a qualification to the appropriate qualification list will not give rise to any costs or to an increase in costs of minimal significance.
- 2.8 This proposal does not incur any costs as it simply updates the list of appropriate qualifications.

### **Compatibility statement**

- 2.9 These proposals are designed to meet our consumer protection objective and have been developed having regard to the principles of good regulation. In particular our proposals have been developed bearing in mind the proportionality principle and the international character of the financial services industry. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

### **Equality and diversity**

- 2.10 We believe that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. However, we would welcome any comments respondents may have on any equality issues they believe arise.

**Contact**

**Comments on the addition to the appropriate qualifications list should reach us by 6 April 2012.**

**Please send them to:**

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# 3

## Proposed minor changes to the liquidity regime

### Introduction

- 3.1 This chapter proposes minor amendments to the liquidity rules in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and on liquidity reporting in the Supervision manual (SUP).
- 3.2 We propose:
- an amendment to the guidance in BIPRU 12.3.7G dealing with reporting frequencies to clarify that the higher frequency reporting is weekly for low frequency liquidity reporting firms and simplified individual liquidity adequacy standards (ILAS) BIPRU firms;
  - amendments to SUP 16.12 and the applicable notes in relation to material currency reporting requirements for liquidity to ensure material currency reporting requirements apply only to FSA047 and FSA048; and
  - amendments to the SUP 16 Annex 24G reporting templates for FSA050 and FSA052. We propose amending FSA050 so that ‘Supranational(s)’ is changed to ‘multilateral development bank(s)’.
- 3.3 The proposed amendments will be made under section 138 (General rule-making power), section 150(2) (Actions for damages), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). These changes will be of interest to ILAS BIPRU firms and simplified ILAS BIPRU firms, but are unlikely to be of specific interest to consumers. The text of the proposed amendments can be found in Appendix 3.

## Proposed amendments

### *Amendment to the guidance in BIPRU 12.3.7G*

- 3.4 BIPRU 12.3.7G provides guidance to ILAS BIPRU firms in relation to the SUP 16 reporting requirements. It notes that although the SUP 16 rules do not require firms to report daily in the absence of a firm-specific liquidity stress or a market liquidity stress, firms are required to have the systems in place to allow them to do so.
- 3.5 The reference to the higher frequency reporting being daily is not accurate for a low frequency liquidity reporting firm or a simplified ILAS BIPRU firm. Both these types of firm report on a monthly basis in normal circumstances and on a weekly basis during a firm-specific liquidity stress or a market liquidity stress.
- 3.6 We propose to amend the guidance to refer to weekly reporting for low frequency liquidity reporting firms and simplified ILAS BIPRU firms that experience a firm-specific liquidity stress or a market liquidity stress.

**Q3.1:** Do you agree with our proposal to amend BIPRU 12.7.3G?

### *Amendments to SUP 16.12 notes for completing liquidity data items*

- 3.7 Our reporting rules require ILAS BIPRU firms to complete certain liquidity data items on a material currency basis. This applies to data items FSA047 and FSA048. This is in addition to requirements to submit these data items on an all-currency combined basis. Liquidity data items FSA050 to FSA054 are completed on an all-currency combined basis only.
- 3.8 SUP 16 rules are supported by notes that contain additional information on how to complete the liquidity data items. In particular, there are two notes within the SUP 16 rules that cross-reference each other regarding our material currency requirements. We have identified an omission in these notes that may incorrectly apply some of the currency requirements to data items FSA050 to FSA054.
- 3.9 Therefore, we intend to amend the notes in SUP 16 to ensure that material currency requirements are applied only to data items FSA047 and FSA048.

**Q3.2:** Do you agree with our proposal to amend the notes for SUP 16.12.5R, SUP 16.12.11R and SUP 16.12.15R?

### *Amendment to the FSA050 and FSA052 data items*

- 3.10 SUP 16 Annex 24G contains the templates for the FSA data items, including the liquidity reporting items FSA050 and FSA052. We propose two items of clarification to the FSA050 and FSA052 data items.

- 3.11** FSA050 records details of an ILAS BIPRU firm's unencumbered assets eligible for inclusion in its liquid assets buffer as defined in BIPRU 12.7. Line 23 of FSA050 is currently titled 'supranational(s)'. Securities issued by designated multilateral development banks are the only assets eligible in BIPRU 12.7 that can meet the definition of 'supranational(s)'. We propose to change the title of line 23 to 'designated multilateral development bank(s)'. This will provide the industry with additional clarity as 'multilateral development bank' is a defined term in the FSA glossary.
- 3.12** FSA052 records details relating to the average transaction volume of, and prices which the firm pays for, certain wholesale liabilities. The data item includes the sentence 'Wholesale Liabilities (Raised during the week ending with the reporting date)', we propose to add 'month ending' to this text to clarify the sentence for firms that report FSA052 on a monthly basis.

**Q3.3:** Do you agree with our proposal to amend FSA050 and FSA052?

### Cost benefit analysis

- 3.13** These proposals do not significantly alter the balance of costs and benefits considered within the cost and benefit analysis (CBA) in PS09/16.<sup>3</sup>
- 3.14** Each of the amendments contained in this chapter is proposed to provide clarity for users of the FSA Handbook. They do not alter the meaning or purpose of the rules or guidance. We do not believe the proposed changes will result in significant costs to firms or the FSA.

**Q3.4:** Do you agree with the cost benefit analysis?

### Compatibility statement

- 3.15** In Chapter 14 of PS09/16, we set out our view that the liquidity reporting regime is compatible with our statutory objectives and the principles of good regulation.
- 3.16** The proposed minor amendments in this consultation are driven by feedback from firms and other industry participants, as well as internal FSA analysis. The policy intention has not changed from that set out in PS09/16.
- 3.17** The minor amendments we are consulting on are intended to help us deliver PS09/16 and to meet our statutory objectives of market confidence and consumer protection. We have considered the principles of good regulation and, in particular, that a burden or restriction

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<sup>3</sup> PS09/16, *Strengthening liquidity standards including feedback on CP08/22, CP09/13, CP09/14*, (October 2009).

should be proportionate to the benefits. Further, we have looked at the need to use our resources in the most efficient and economic way, and taken into account the international character of financial services and markets and the desirability of maintaining the competitive position in the UK.

## Equality and diversity

- 3.18** We have concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

### Contact

**Comments should reach us by 6 May 2012. Please send them to:**

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# 4

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## Significant Risk Transfer in the Trading Book

### Introduction

- 4.1 This chapter proposes the following amendments to our Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU), which introduce the Significant Risk Transfer (SRT) requirements into the trading book.
- Changes to BIPRU 7.2 which prevent securitised exposures being excluded from the originator's market risk capital requirement unless significant risk has been transferred to third parties.
  - Changes to BIPRU 9 to clarify that the significant risk transfer requirements there apply to securitisations originated in the trading book as well as those originated in the banking book.
- 4.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 150(2) Action for damages, section 156 (General supplementary powers) and section 157(1) (Guidance), of the Financial Services and Markets Act 2000 (FSMA).
- 4.3 The amendments will be of interest to firms with significant securitisation activities, particularly those engaged in originating securitisations in the trading book. To the extent the amendments may reduce the risk of firm failure resulting from undercapitalisation of risks, they may be of indirect interest to consumers. The proposed Handbook text can be found in Appendix 4.



## Proposed amendments

- 4.4 The Turner Review<sup>4</sup> identified the inconsistent treatment of securitisations in the banking book and trading book as one of the main problems with the market risk capital framework prior to the crisis. The Basel 2.5 package<sup>5</sup>, implemented in the EU by the Capital Requirements Directive III (CRD3), sought to harmonise the prudential treatment of securitisations across the banking book and trading book by applying risk weights from the banking book securitisation regime to securitisations in the trading book. This is intended to minimise or eliminate opportunities for arbitrage across the trading book boundary for securitisation positions.
- 4.5 However, under our implementation of Basel 2.5 via CRD3 in PS11/12<sup>6</sup>, the SRT requirement does not apply to securitisations originated in the trading book as it does to securitisations originated in the banking book. This creates an opportunity for arbitrage across the boundary as firms may originate securitisations in the trading book in order to obtain capital relief without having to comply with the SRT requirements. Therefore, we are seeking to amend the Handbook to apply SRT to the trading book.
- 4.6 When a firm originates a securitisation in the banking book and transfers risk off its balance sheet to third parties, it may obtain capital relief for the transaction if it meets the SRT requirements. CRD2 introduced more detailed requirements around SRT. There are specific quantitative requirements for SRT to be met, although the competent authority may overrule these where the reduction in risk-weighted exposure amounts is not justified by a commensurate transfer of credit risk to third parties. The competent authority may also allow an originator to make its own assessment provided it is satisfied that the originator can meet certain requirements in terms of risk management and controls.
- 4.7 Under CRD3, it is not clear whether or not SRT applies to securitisations originated in the trading book. More specifically, although Annex I point 16a in the Capital Adequacy Directive (CAD) (Directive 2006/49/EC, as amended by CRD3) cross-refers to Annex IX in the Banking Consolidation Directive (BCD) in relation to the use of capital charges and the supervisory formula method (SFM), it is not clear whether the extent of this cross-reference could be understood to include the remainder of the securitisation rules in Annex IX, specifically the rules on SRT. As a result, an argument could be made that CRD does not require that the SRT requirement be applied to securitisations originated in the trading book. Article 326 of the draft CRD4 Regulation, largely a copy-out of the CRD3 text, is no clearer in this regard. The Basel Accord explicitly states that securitisation warehouses should be ineligible for trading book treatment<sup>7</sup>, although this

4 Financial Services Authority, *The Turner Review: A Regulatory Response to the Global Banking Crisis*, (2009) [www.fsa.gov.uk/pubs/other/turner\\_review.pdf](http://www.fsa.gov.uk/pubs/other/turner_review.pdf).

5 Basel Committee on Banking Supervision, *Revisions to the Basel II market risk framework*, (February 2011), [www.bis.org/publ/bcbs193.htm](http://www.bis.org/publ/bcbs193.htm).

6 PS11/12, *Strengthening Capital Standards 3 – feedback and final rules for CRD3*, (November 2011).

7 The February 2011 amendments to the Basel Accord amended footnote 3 to read:

‘The additional guidance does not modify the definition of the trading book set forth in the revised Framework. Rather, it focuses on policies and procedures that firms must have in place to includebook exposures in their trading books. However, it is the Committee’s view that, at the present time, open equity stakes in hedge funds, private equity investments, positions in a securitisation warehouse and real estate holdings do not meet the definition of the trading book, owing to significant constraints on the ability of firms to liquidate these positions and value them reliably on a daily basis.’

requirement is not in CRD3 or the CRD4 Regulation. This limits the potential scope of origination activity in the trading book; for example it would exclude much traditional securitisation based on residential mortgages or corporate loans as these underlying assets would not qualify for trading book treatment. However, this leaves other types of securitised exposures which firms may argue meet the trading intent criteria, such as re-securitisations or securitisations of other trading book exposures.

- 4.8** The FSA implementation of CRD3 was largely a copy-out and did not apply SRT to the trading book. BIPRU 9.1.9G(3) lists the aspects of BIPRU 9 that are relevant to securitisations in the trading book, and SRT is not included in the list. Furthermore, BIPRU 7 (trading book) identifies a number of rules from BIPRU 9 (securitisation) that apply to securitisations in the trading book and the SRT rules are not explicitly listed. Therefore, in order to apply SRT in the trading book, we propose to amend the Handbook to include specific rules in BIPRU 7. The proposed new rules will be super-equivalent to the CAD and the BCD, but we believe that it is appropriate to go beyond Directive minima in this case to close a gap in the rules and to further our statutory objectives of market confidence and financial stability.
- 4.9** We are proposing to extend SRT to the trading book so that originators of securitisations in the trading book must notify the FSA and demonstrate SRT before excluding securitised exposures from the calculation of capital requirements. We do not propose to apply SRT to the correlation trading portfolio (CTP). Given that these positions have been carved out of a banking book treatment and they are only held in the trading book, the need to minimise the scope of regulatory arbitrage across the boundary is less relevant. In addition, much CTP activity that may fall in the category of origination does not involve securitisation of cash positions but is rather part of a business model of buying and selling protection via credit derivatives. For other genuine trading book securitisation activities we will take a risk-based approach and we will provide guidance as appropriate to avoid imposing an unnecessary burden on banks. We would welcome specific examples of product or business lines where such guidance may be merited.
- 4.10** We note that, consistent with the Basel Accord, risk associated with securitisations in the trading book is captured by the market risk capital requirement, even though from an economic point of view it is credit risk that is being transferred and the relevant risk weights are based on credit risk (following Basel 2.5). For the avoidance of doubt, it is not our intention to extend the significant risk transfer requirements beyond the transfer of credit risk. Hence, where our proposed Handbook changes refer to the transfer of 'risk' this refers to credit risk associated with securitisations located in the banking book or trading book (which, in the latter case, will be captured under the definition of 'market risk').

*GC11/12, Proposed guidance on the supervisory formula method and Significant Risk Transfer, (May 2011)*

- 4.11** The SFM may be used by banks to calculate their capital requirements for unrated securitisation positions. It may be used without permission by originators of securitisations,

on the basis that they have a good understanding of the risks associated with the underlying exposures. However, the FSA is concerned that the SFM can in many cases generate risk weights for securitisation positions that do not accurately reflect the risk of the positions and which can result in disproportionate capital relief being claimed via securitisation, particularly where securitisations are structured to exploit the weaknesses of the SFM in order to minimise the capital charge. Hence, GC 11/12 requires banks to obtain ratings for securitisation positions as a necessary but not sufficient condition of getting SRT. This requirement may only be waived in exceptional circumstances and with the FSA's permission.

**Q4.1:** Do you agree with our proposal to amend BIPRU 7.2 and BIPRU 9 to introduce the SRT requirement into the trading book?

### Cost benefit analysis

- 4.12** The aim of applying SRT in the trading book is to correct a regulatory failure. Currently, firms can avoid the SRT test by originating securitisations in the trading book, rather than the banking book. This new rule removes this opportunity for regulatory arbitrage by ensuring that the securitisation regime implemented by CRD2 and CRD3 is consistently applied across both the trading and banking books.
- 4.13** The main benefit from this new rule is to remove the risk that firms do not hold sufficient capital against securitised positions held in the trading book to reflect the risks associated with these positions.
- 4.14** The main compliance costs imposed on firms by this proposal is the additional reporting costs. These stem from the new obligation on firms to notify the FSA of securitisations originated in the trading book. We expect these costs to be small since when the SRT notification requirements were introduced into the banking book, (in which origination of securitisations is much more common), they were found to be modest in a survey of firms.<sup>8</sup>
- 4.15** Additionally, this new rule could have a capital impact, where firms must raise more capital in instances where their securitised positions in the trading book do not meet the SRT test. However, our analysis suggests that this impact is likely to be negligible. According to regulatory returns submitted to the FSA in June 2011, only three firms have gained capital relief by originating securitisations in the trading book.<sup>9</sup> For each firm, the features of the specific deals in question make it very likely that the transactions would have gained non-objection by the FSA, suggesting that the capital impact of this new rule would be zero. In the event that all three transactions did not meet the SRT test, the capital impact would be around £340m. However, we do not think that this capital impact

<sup>8</sup> See para. 5.75 of CP09/29, *Strengthening Capital Standards 3*, (December 2009).

<sup>9</sup> Although there are more examples of own-originated securitisations in the trading book, we excluded most of these since they had been originated in the banking book and then transferred to the trading book, as SRT would have applied to these transactions.

is likely to materialise in practice. Therefore, the impact is more likely to be zero or close to zero than £340m.

- 4.16** It is worth noting that the estimates in paragraph 4.15 relate to the compliance costs to firms of imposing SRT in the trading book at a recent point in time (June 2011). However, it is likely that the majority of both the benefits and compliance costs to firms (reporting and capital impact costs) from this new rule are likely to be realised in the future. The magnitude of these costs and benefits depends on how much firms would take advantage of the trading book to originate securitisations in the future if the proposed changes were not made. It is possible that originating in the trading book could, without this new rule, become more attractive as securitisation markets recover from the crisis and firms seek to reduce the capital impact of the CRD2 and CRD3 rules. However, it is difficult to know to what extent this would have been the case and, therefore, to estimate these costs and benefits with any degree of accuracy.

## Compatibility statement

- 4.17** The changes proposed help us to meet our objectives of protecting consumers, financial stability and market confidence. As specified under section 2(3) of FSMA, we have had due regard to the principles of good regulation. In particular, we believe that the regulatory burden or restriction is proportionate to the benefits. Additionally, we have had due regard to the international character of financial services and markets, and the desirability of maintaining the competitive position of the UK.

## Equality and diversity

- 4.18** We have considered the equality and diversity impact of these proposed changes and we do not believe they give rise to any discrimination or other equality concerns.

### Contact

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# 5

## Pension scheme disclosure proposals

### Introduction

- 5.1** In this chapter we are proposing amendments to the personal pension scheme disclosure rules in Chapters 13 and 14 of the Conduct of Business sourcebook (COBS). This follows an earlier consultation in CP11/3<sup>10</sup>. Following consideration of responses to the earlier consultation, and subsequent informal consultation with industry stakeholders, we have decided to re-consult on revised proposals which reflect the comments and suggestions received.
- 5.2** We are consulting on these proposals as our recent reviews have shown that some consumers are switching to pension products branded as self-invested personal pension schemes (SIPPs) without good reason, often incurring charges unnecessarily. Also, our reviews of personal pension scheme disclosure documents reveal that many documents fall short of our expectations. In making these proposals we aim to address these concerns.
- 5.3** This chapter will be of interest to pension scheme operators and pension scheme trustees, firms advising on personal pension schemes, and individual investors in personal pension schemes.
- 5.4** The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 5.

### Background

- 5.5** In 2007 SIPP operators became subject to regulation by the FSA. Since then sales of pension schemes described as SIPPs have grown, so much so that they can now be considered

<sup>10</sup> CP11/3, *Product disclosure: Retail investments – changes to reflect RDR Adviser Charging and to improve pension scheme disclosure*, (February 2011).

mainstream rather than niche products. Moreover, our product sales data<sup>11</sup> shows that sales of pensions categorised as SIPPs exceed sales of those categorised as individual personal pensions. This is primarily due to more SIPPs being offered by life companies or made available online.

- 5.6 This same product sales data also indicates that non-advised sales of SIPPs almost outnumber advised sales. So, in making important pension decisions, a significant number of pension scheme members are not receiving advice and must rely mainly on information provided by the scheme operator.
- 5.7 Under our current rules, if scheme operators describe a pension scheme as a SIPP there is no requirement on them to provide clients with a projection in a key features illustration (KFI) (for most SIPPs), or an ‘effect of charges’ (EoC) table and reduction in yield (RIY) information (for any SIPP).<sup>12</sup>
- 5.8 There is also no specific rule for pension scheme operators to disclose the extent to which they receive bank or other commissions (in relation to assets held within the schemes they operate), nor is there any requirement to disclose the extent to which bank interest (in relation to cash held by members of the schemes) is retained by the pension scheme operator or trustee.
- 5.9 To help consumers or their advisers compare alternative pension products and identify the most appropriate pension option, we think our rules should require that comparable information is always made available. In order to achieve this, we are proposing that the existing SIPP exemptions are removed from COBS 13 and COBS 14, and the same disclosure rules applied to all personal pension schemes, whether branded as a SIPP or not.
- 5.10 This approach will be consistent with the approach of the Department of Work and Pensions (DWP), which does not distinguish between different types of personal pension scheme and requires statutory money purchase illustrations (SMPI) for all personal pensions, whether branded as a SIPP or not, and regardless of the underlying assets.
- 5.11 In November 2010, the Association of Member-Directed Pension Schemes (AMPS) and the Association of British Insurers (ABI) published a joint ‘Provider Guidance for SIPP Customer Literature’. This ‘good practice’ industry guidance sets out ways to improve the disclosure of SIPP operators’ fees. So far, its impact on practitioners’ disclosure material appears patchy, but we see it as complimentary to the proposals we are now making.

## Feedback from CP11/3

- 5.12 In Chapter 3 of CP11/3 we proposed to remove the ‘SIPP’ exemptions from the disclosure requirements, and replace them with exemptions that would only be available if personal

<sup>11</sup> Product sales data for April to September 2011.

<sup>12</sup> The ‘projection’ exemption does not apply if income withdrawals are being taken from the SIPP or if the SIPP is being used to contract out of the State Second Pension.

pension schemes invested in commercial property, commodity investments, ‘synthetic’ exchange traded funds or shares (that are not shares in an investment trust). We also proposed to amend the rules to require firms to show whether they retain bank interest or receive commissions on cash held in a bank account within a personal pension scheme.

- 5.13** Over 30 respondents from all sectors of the industry replied, providing us with an insight into current practices and how regulation should respond to the changing market. For example, this confirmed that many SIPP operators do not make use of the existing exemptions and provide KFIs for their schemes anyway. Key feedback was that respondents wanted the rules to require firms to be clear about their charges and the impact these will have. Many respondents wanted the rules to be unambiguous and did not see the value in exempting certain asset classes from the requirement to provide a SIPP projection. However, there were diverse views. For example, one respondent suggested that all assets should be grouped together and, with the exception of cash, illustrated using standard projection rates. Another respondent suggested that illustration requirements should only apply to investments in insured funds.
- 5.14** Several respondents indicated that maintaining a list of ‘exempted’ assets would create regulatory risks and costs, because the list would need to be maintained and consulted on as innovation in investments continues. It was also argued that administrators could struggle to identify the ‘esoteric’ investment categories that would have determined whether or not exemptions applied. Some respondent firms requested guidance on how a projection should be prepared when a SIPP invested in a combination of assets, where some would require a projection and some not. Others mentioned additional investments for which it might also be difficult to produce meaningful projections: hedge funds, structured products, offshore portfolios bonds and exempt property unit trusts.
- 5.15** In relation to the disclosure of bank account interest retained and its proposed treatment as a charge there were polarised views. Some respondents referred to the practical difficulties and costs they would face if they needed to explain complex interest-rate retention calculations and commission payment arrangements.
- 5.16** In relation to the disclosure of bank commissions, some respondents indicated that, in addition to bank commissions, firms may receive other commissions, such as from insurance providers and fund managers for non-cash assets and may not disclose these receipts to the scheme members. It was suggested that, in the interests of fairness and transparency, disclosure requirements should apply to all commissions received by a pension scheme operator or pension scheme trustee for any personal pension scheme asset.

### **Our responses to feedback on CP11/3 proposals**

- 5.17** We accept that our original proposals would have created practical difficulties for firms and scope for firms to adopt unhelpful, inconsistent approaches to the production of KFIs. We



agree with those respondents who argued that the pension scheme disclosure rules should provide certainty, consistency and greater simplicity. So, we have amended our proposals.

- 5.18** We considered the diverse views to bank account interest retention and concluded that, as this is an income stream pension scheme operators choose to take, perhaps instead of more explicit charges, it is, in effect, a charge on the scheme and this should be disclosed as such. We accept that calculating the interest retained may not always be straightforward. So, as indicated in the proposed rules, firms will not need to disclose precise details of the exact cash value of the interest retained or commissions received on each individual sale. However, we will expect firms to give an adequate indication of these receipts in sufficient detail, perhaps by referring to percentage returns, so clients can assess their value.
- 5.19** We accept that the precise value of bank interest may depend on balances held at one or more banks and so may be difficult to determine. However, we believe that it will be possible for firms to give an indication of how such amounts can be calculated.
- 5.20** We also agree with the suggestion that there should be disclosure of all commissions (not just bank commissions) received by a pension scheme operator or pension scheme trustee for any personal pension scheme asset.

## Revised proposals

- 5.21** In making the following revised proposals, we address the key issues raised and offer both firms and consumers a pragmatic outcome. Bearing in mind the assets chosen, we continue to take the view that there is little distinction between most schemes branded as self-invested personal pension schemes (SIPPs) and other personal pension schemes.

### *Key features illustrations, effect of charges and reduction in yield*

- 5.22** We now propose that, for all personal pension schemes, disclosure documents should include projections, effect of charges and reduction in yield information, no matter what the underlying assets are. In our view, unless equivalent disclosure rules apply to all schemes, no matter how invested, consumers and advisers will not have the information they need to understand the costs and benefits applying to competing schemes and to identify an appropriate and cost-effective personal pension choice. Although many firms provide this disclosure anyway, some firms may find it a challenge to provide meaningful illustrations for certain assets and will need to apply more thought in making and justifying assumptions. This may involve a need for more dialogue between operators, consumers and advisers to establish investment intentions and hence charges (charges often vary depending on the transactions an investor chooses to make). In our view, such disclosure is both possible and in line with the disclosure required for pension drawdown illustrations and statutory money purchase illustrations.



- 5.23** To help clarify our expectations, we propose to introduce guidance on the preparation of projections to make it clear that firms can use ‘reasonable assumptions’, subject to the normal projection rule limits, when providing customers with personalised illustrations that relate to their investment decisions. When making the best available ‘reasonable assumptions’ in relation to assets that are likely to be volatile or difficult to value, we do not expect firms to undertake or commission costly valuations or reports on market trends (unless this is the only way they can form ‘reasonable assumptions’). However, we do expect firms to take a prudent approach, to make reasonable enquiries and to actively consider the relevant issues. Firms should be able to explain why they consider their assumptions to be reasonable and, if appropriate, to support their assumptions with objective data. We view this approach as consistent with the rules relating to future performance information.<sup>13</sup>

#### *Disclosure of bank interest retained and commissions received*

- 5.24** Most scheme operators include an integral bank account within their schemes, from which fees and charges are deducted and into which scheme income is put. Our reviews of disclosure material show that it is not always clear whether interest arising due to money held within these accounts is being retained by the scheme operator or passed on to the scheme member in full; nor is it always clear whether commissions are received by operators in relation to cash held within a scheme. So, in CP11/3, we proposed a rule to require firms to specifically disclose, as part of the disclosure of all costs and associated charges, whether they retain bank interest or receive commissions on cash held within a personal pension scheme.
- 5.25** Given the fiduciary duties firms have under the general common law and the impact of the Bribery Act 2011 for facilitation payments, our view is that firms should not act for their own benefit and make and retain a secret profit from a scheme member’s assets. If received, firms should disclose these payments, allowing the client to give informed consent to any commissions retained. Therefore, we are amending our proposals to require personal pension scheme operators to disclose whether they (or the pension scheme trustees) receive commissions for any asset (both cash and non-cash) held within a personal pension scheme.
- 5.26** We are proceeding with the proposal to require that firms disclose details of any bank account interest retained for money held within a scheme. And we are proposing to require information, about interest retained and commissions received by the firm, to be disclosed alongside the necessary information about fees, costs, charges payable and bank interest rates receivable by the client.

#### *Provision rules*

- 5.27** Our rules in COBS 13 detail how firms should prepare product information and our rules in COBS 14 detail how firms should provide product information to clients. As a

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<sup>13</sup> COBS 4.6.7R and COBS 4.6.9R.

consequence of our amended approach to scheme disclosure requirements, and to ensure that the rules are consistent, we are proposing to amend the provision rules in COBS 14 so they apply in the same way to all pension schemes, no matter how branded.

### Other policy considerations

- 5.28** As stated in CP11/3, we are not proposing to amend the existing FSA Glossary definition for a ‘self-invested personal pensions scheme’, and we continue to take the view that any personal pension scheme can be called a SIPP, unless the arrangement gives the member no investment choice at all, regardless of whether or not members have access to a bank account.
- 5.29** In addition to these proposed changes to the personal pension scheme disclosure rules, firms should be aware of other relevant policy initiatives: for example, the Retail Distribution Review, our revised policy for platform service providers<sup>14</sup> (many pension schemes are held on platforms) and the possible introduction of inflation-adjusted KFI.

### Next steps and transition arrangements

- 5.30** These revised proposals reflect feedback received from stakeholders and should help deliver appropriate and comparable disclosure documents for consumers considering their pension options. Although the exemptions proposed in CP11/3 were considered pragmatic and proportionate, we now accept that meaningful comparison between schemes is not possible if information about certain ‘esoteric’ assets or the commissions paid in relation to non-cash assets is withheld.
- 5.31** As a result of these proposals, some pension scheme operators, may need to revise their scheme literature and websites, and provide more disclosure documents than currently. Some firms may also decide to reconsider their business models and charging structures where, for example, profitability currently relies heavily on bank interest retained on scheme funds. While recognising the regulatory burden that smaller firms in particular face, we are proposing to have these rule changes come into force at the end of 2012. This should provide firms with sufficient time in which to address the new disclosure requirements and the opportunity to make system changes at the same time they address related regulatory changes.

**Q5.1:** Do you agree that the pension scheme disclosure rules should be amended at the end of 2012 to remove exceptions applying to pension schemes described as ‘SIPPs’?

If no, please indicate how our rules, or the in-force date, should be amended to ensure that consumers and their

<sup>14</sup> CP10/29, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services*, (November 2010) and PS11/9, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services*, (August 2011).

advisers can compare personal pension schemes investing in the same assets.

- Q5.2:** Do you agree that our rules should reflect firms' fiduciary duties and require disclosure of all commissions (and similar payments) that a pension scheme operator or pension scheme trustee receives in relation to assets held within the scheme (both bank and non-bank assets)?

### Cost benefit analysis

- 5.32** Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 5.33** In CP11/3 we made an assessment of the costs and benefits relevant to our proposals. Our revised proposals aim to reduce complexity by requiring the same disclosures for all pension schemes (without introducing exemptions for certain investments), while expanding the required disclosure content, to be in line with firms' existing fiduciary duties. Details are set out below of the costs and benefits of our proposed amended approach. Overall the costs and benefits are broadly similar to those we outlined in CP11/3.

### Firms to provide disclosure documents for all pension schemes, including SIPPs

#### *One-off costs*

- 5.34** Our original estimate assumed that most scheme operators would offer pension drawdown facilities or accept contracted-out funds (no respondents argued otherwise). So, to comply with existing requirements, most firms operating schemes should already have the means of providing compliant KFIs and should not incur one-off costs to introduce these documents. In addition some KFI software that we have looked at produce KFIs largely as we now propose. While some software on the market may need enhancement, we believe this can normally be done as part of current maintenance agreements.
- 5.35** Further, as the DWP has required SMPIs for all personal pension schemes since 2003 (there are no exclusions for SIPPs) all scheme operators should currently have the methodologies to establish reasonable charge and growth rates for each of the major assets in their SIPPs, as well as the systems needed to provide this type of illustration.

### *Ongoing costs*

- 5.36 The product sales data for April to September 2011 showed that 111 firms took on new schemes branded as ‘SIPPs’. It is these ‘SIPP operator firms’ who will face additional costs if they need to produce more KFIs than currently. The product sales data and information from the ABI indicates that up to 200,000 schemes described as ‘SIPPS’ are now sold annually. Industry commentators suggest that at least 20% involve pension drawdown. This means that each year around 160,000 new schemes will be subject to our proposed rules. However, we know from our own analysis that over 60% of SIPP operators – including most of the market leaders – provide KFIs anyway.
- 5.37 As we intend to help consumers and their advisers to more readily compare charges, we should assume that more than one KFI will be prepared for each potential sale. But not all this cost will fall on operators because we expect nearly half of all SIPPs will be purchased directly. Thus the vast majority of these investors will use operators’ web-based KFIs rather than ask for paper versions to be supplied.
- 5.38 So taking all these factors into account, we consider that a maximum of 50,000 extra KFIs will be required. Assuming an average cost of producing a KFI of £2, we estimate an ongoing cost to the industry of £100,000 per year. Depending on industry competition, some or all these costs could be passed on to consumers.

### *Benefits*

- 5.39 For the benefits of this proposal to arise, consumers or their advisers will compare personal pension schemes and other products, and this, in turn, may lead to more suitable decisions, so consumers should benefit. While more than half of the providers already provide KFIs we have not sought direct evidence that those who take out a SIPP from providers who currently provide KFIs have systematically made better purchasing choices than those who take out a SIPP from providers who currently do not provide KFIs. Nevertheless, it is reasonable to infer that because these pensions are *self invested* there will be a good degree of consumer engagement in the process, including in making appropriate comparisons.

### **Firms to disclose retained bank account interest and all commissions received on pension scheme assets**

- 5.40 Requiring disclosure of the amount of bank interest retained or received by the scheme operator, and specific disclosure of all commissions and similar payments (if received) could result in some firms facing increased costs.

### *One-off costs*

- 5.41 We estimate that the proposed enhanced disclosure could involve additional one-off and ongoing costs for up to 120 firms that currently market personal pension schemes described as SIPPs. The impact of these proposals will vary depending on firms’ existing business

models, the content of their existing disclosure documents and the ease with which they can update them. Our proposals in CP11/3 applied to bank interest retention and bank commission disclosure and would have affected fewer firms, as not all schemes retain interest or receive commission. We take the view that all firms, including pension scheme operators, have a fiduciary duty in law to account to their clients and should not make a secret profit. We consider our proposals to be in line with this legal duty. Those firms that do not retain bank interest and do not receive any undisclosed commissions will incur relatively few costs as a result of these proposals. We estimate the cost of revising disclosures by those scheme operators currently receiving undisclosed commissions who wish to continue to retain bank interest to be £800 per firm. Although at least 20% of operators do not retain some of the interest on their clients' bank accounts we do not know how many do not disclose commissions. Therefore, if we assume that all firms currently marketing 'SIPPs' will have to amend their disclosures, we estimate a maximum one-off industry cost to be:  $120 \times £800 = £96,000$ .

### *Ongoing costs*

- 5.42** Formalising the way this disclosure is made will involve some costs for some firms. However, for most scheme providers, we consider that there should be only minimal ongoing costs associated with providing new consumers with up-to-date information on commissions and/or bank interest. In our view, it should be possible to make any ongoing changes as part of a firm's routine maintenance of their documents. These proposals would not require the re-papering of existing clients.

### *Benefits*

- 5.43** For the benefits of disclosure to arise, consumers and advisers need to be able to compare substitutable products and make suitable decisions. The disclosure of retained bank account interest and commissions received on all assets will help consumers and their advisers gain a better understanding of the overall costs and benefits applying to different pension schemes. As a result, some consumers may make better-informed purchasing decisions. However, we do not expect this effect to be large, as research indicates that only some consumers pay sufficient attention to product charges.

**Q5.3:** Do you have any comments on the analysis of costs and benefits as they affect your firm?

## Compatibility statement

- 5.44 The changes to COBS 13 and COBS 14 are designed to help us meet our consumer protection and market confidence objectives. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.
- 5.45 In relation to the need to use our resources in the most efficient and economic way, the proposals set out in this chapter should not lead to any material change in terms of how efficiently and economically we use our resources.
- 5.46 In relation to the principle that a burden or restriction imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of the burden or restriction, we consult on revised proposals as the original proposals consulted on in CP11/3 could have created some practical difficulties.

## Equality and diversity issues

- 5.47 Our initial equality impact assessment shows that our proposals do not discriminate either directly or indirectly against any of the protected groups. Our proposals ensure continuing regulatory protection for all borrowers regardless of any protected groups they may belong to. We will, however, continue to pay regard to equality and diversity issues as these proposals evolve and will revisit the matter if there are any significant changes.

### Contact

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# 6

## Credit Unions

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### Introduction

- 6.1** This chapter proposes minor amendments to the Handbook for:
- credit unions in Great Britain to achieve a single regulatory regime for all credit unions in the UK; and
  - all credit unions, whether in Great Britain or Northern Ireland, to update and clarify the Handbook.
- 6.2** In PS11/18<sup>15</sup> we confirmed the FSA rules that will apply to credit unions in Northern Ireland from 31 March 2012, when the FSA will take on regulatory responsibility. We confirmed that the Credit Unions New sourcebook (CREDS) and other parts of the FSA Handbook will apply to credit unions in Northern Ireland but that the CREDS rules on share account size limits and joint accounts will be less restrictive than those that currently apply to credit unions in Great Britain, at least initially. In this chapter we meet our commitment to consult on raising these limits for credit unions in Great Britain to achieve consistency.
- 6.3** The proposals will be of interest to:
- credit unions;
  - their officers and volunteers;
  - their trade associations;
  - their IT systems and software providers; and
  - their auditors.
- 6.4** The proposals to ensure consistent credit union regulation in the United Kingdom will relax some existing restrictions on share accounts in credit unions in Great Britain and so

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<sup>15</sup> PS11/18, *FSA regulation of credit unions in Northern Ireland*, (December 2011).

will be of particular interest to consumers, especially existing and potential members of these credit unions.

- 6.5 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 149 (Evidential provisions), section 156 (General supplementary powers), section 157(1) (Guidance), section 213 (The compensation scheme), section 214 (General) and section 226 (Compulsory jurisdiction) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 6.

## Proposed amendments

### *Share account size limits*

- 6.6 Currently, under CREDS 4.2.1R, credit unions in Great Britain must not allow members to have share accounts exceeding the greater of £10,000 or 1.5% of the total shares in the credit union.
- 6.7 In CP11/17<sup>16</sup>, we consulted on applying the same CREDS limit to credit unions in Northern Ireland once regulatory responsibility transfers to the FSA. The application of this CREDS limit would be a restriction of the existing share account limit in Northern Ireland of £15,000 or 1.5% of total shares. Feedback suggested that this would be a retrograde step and would discourage thrift by restricting savings.
- 6.8 In response in PS11/18<sup>17</sup>, we noted that the rationale for a low share account limit was to prevent credit unions from taking on concentration risk by accepting individual shareholdings that are relatively large compared with total shareholding. However, we accepted the arguments presented by credit unions in Northern Ireland and confirmed that their share account limit could remain at £15,000 or 1.5% of total shares in the credit union. We also committed to consulting on raising the limit to this level for credit unions in Great Britain.
- 6.9 Therefore, we propose amending CREDS so that credit unions in Great Britain must not allow members to have share accounts exceeding the greater of £15,000 or 1.5% of the total shares in the credit union. This would mean that the same limit would apply to credit unions in Great Britain and Northern Ireland.

**Q6.1:** Do you agree with the proposal to increase the share account limit for credit unions in Great Britain to achieve consistency with the limit for credit unions in Northern Ireland?

<sup>16</sup> CP11/17, *FSA regulation of credit unions in Northern Ireland*, (August 2011).

<sup>17</sup> PS11/18, *FSA regulation of credit unions in Northern Ireland*, (December 2011).



*Joint accounts*

- 6.10** Currently, under CREDS 4.2.4R, shares in credit unions in Great Britain must not be held in the joint names of more than two members.
- 6.11** In CP11/17, we consulted on applying the same CREDS limit to credit unions in Northern Ireland. This would be a restriction as currently there is no limit on the number of joint shareholders in credit unions in Northern Ireland. Respondents to the consultation queried the rationale for the CREDS limit and argued that the existing arrangements should remain.
- 6.12** In response in PS11/18, we accepted the feedback received and confirmed that credit unions in Northern Ireland will be able to continue offering share accounts with no limit on the number of joint members. We also committed to consulting on removing the limit for credit unions in Great Britain.
- 6.13** Therefore, we propose amending CREDS so there is no limit on the number of joint shareholders in credit unions in Great Britain. In addition, we propose that, in order to calculate the interest or stake of a member in a joint share account in a credit union in Great Britain, all members are taken to have an equal interest or stake. For example, where there are five joint shareholders, each shareholder is treated as having a 20% shareholding in the share account. We also propose amending CREDS to clarify that this interest or stake applies for the purpose of the limits on a member's shareholding and the limits on lending to a member. These proposals would mean that the same rules would apply to credit unions in Great Britain and Northern Ireland.

**Q6.2:** Do you agree with the proposal to remove the limit on the number of joint shareholders in credit unions in Great Britain to achieve consistency with the rule for credit unions in Northern Ireland?

*Minor amendments to CREDS and other parts of the FSA Handbook*

- 6.14** We propose a number of minor amendments to CREDS and other parts of the FSA Handbook that apply to all credit unions, whether in Great Britain or Northern Ireland, in order to update some sections and clarify some issues of which we have become aware.
- An amendment to CREDS 5.1.6G to update the conditions under which a credit union may issue interest-bearing shares under the Credit Unions Act 1979, reflecting the fact that the FSA may set out additional conditions in a direction.
  - An amendment to CREDS 9.2.10R to delete the reference to the Central Analysis and Reporting Department of the FSA, which no longer exists, and replace it with the Data Monitoring team of the FSA.

- Amendments to CREDS Sch 2.1 to:
  - refer to notification requirements, which is the subject of this schedule, rather than record keeping requirements; and
  - refer to CREDS 7.4.3R, which contains the large exposure notification requirements, rather than CREDS 7.4.6G.
- Amendments to the Supervision manual (SUP).
  - To clarify how credit unions should report deferred share reserves and revaluation reserves in order to ensure that required validations work and to comply with CREDS 5.2.1R(8). Under CREDS 5.2.1R(8) revaluation reserves can only make up 25 per cent of a credit union's capital. We propose amending the Supplementary analysis of the annual return (CY) for credit unions and the Supplementary analysis of the quarterly return (CQ) for credit unions, (which are contained in SUP 16 Annex 14) and the accompanying notes to the CY and CQ (which are contained in SUP 16 Annex 15). The amendments propose that credit unions should report deferred share reserves and revaluation reserves in the supplementary analysis rather than in the main body of the CY and CQ in order to calculate a re-valued amount of fixed assets, reserves and capital.
  - To update the contact details in the notes to the CQ (in SUP 16 Annex 15), replacing existing phone numbers with the details for the Customer Contact Centre.
- An amendment to COMP 5.3.1R(2) to clarify that subordinated debt will not be compensated by the Financial Services Compensation Scheme (FSCS) should a credit union be declared in default. Subordinated debt is intended to be a form of capital that can absorb losses on default. COMP 5.3.1R(2)(a) makes it clear that subordinated debt issued by banks and building societies is not covered by the FSCS but there is some doubt about whether this is also the case for credit unions. We propose an amendment to COMP 5.3.1R(2) to clarify the position for credit unions and also an amendment to CREDS 5.2.1A to provide that credit unions must disclose to the potential holders of such debt that it is not covered.

**Q6.3:** Do you agree with the proposal to amend CREDS and other parts of the FSA Handbook in order to update some sections and clarify some issues?

## Cost benefit analysis

- 6.15** Section 155 of FSMA requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider that the proposals will not give rise to any costs or to an increase in costs of minimal significance.

### *Share account size limits and joint accounts*

- 6.16** These proposed amendments are deregulatory in that they relax existing restrictions on share accounts in credit unions in Great Britain. So the proposals do not increase costs, and we expect them to deliver benefits by making savings with credit unions more attractive for credit union members.

### *Corrections to CREDS and other parts of the FSA Handbook*

- 6.17** The proposal to clarify that subordinated debt will not be compensated by the FSCS in the event of a credit union's default aims to avoid misinterpretation of the rules on the part of credit unions. If in the past some credit unions have made subordinated debt more attractive for investors by marketing it as covered by the FSCS then the proposed clarification may make it more difficult for credit unions to issue such debt in future. However, based on internal analysis, we think this is very unlikely and so the proposed amendment is unlikely to give rise to any costs.
- 6.18** All other proposed amendments are minor and will not give rise to costs or will result in an increase in costs of minimal significance.

## **Compatibility statement**

- 6.19** In previous consultation papers, we have confirmed that the regulation of credit unions, whether in Great Britain or Northern Ireland, is compatible with our consumer protection and market confidence objectives (see CP09/27<sup>18</sup> and CP11/17<sup>19</sup>). The proposed amendments in this chapter are compatible with the FSA's general functions. We have given particular consideration to the need to use our resources in the most efficient and economic way and the principle that a burden or restriction should be proportionate to the benefits.

## **Equality and diversity**

- 6.20** The likely equality and diversity impacts of the proposals have been assessed and do not give rise to any concerns. However, any comments from respondents are welcome.

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18 CP09/27, *A review of the Credit Unions Sourcebook (CRED)* (November 2009).

19 CP11/17, *FSA regulation of credit unions in Northern Ireland*, (August 2011).

## Contact

**Comments should reach us by 6 May 2012. Please send them to:**

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# 7

## Changes in Listing Rules and the Supervision manual for the UKLA provision of individual guidance

### Introduction

- 7.1 In this chapter we are consulting on amendments to two parts of the Handbook: Chapter 11 of the Listing Rules (LR) and Chapter 9 of the Supervision manual (SUP).
- 7.2 We are proposing to re-define ‘substantial shareholder’ as set out in LR 11.1.4R so that where an authorised firm holds 10% or more of the voting rights of an issuer, and subject to other conditions, these voting rights may be disregarded for the purpose of the related party definition in LR 11.1.4R.
- 7.3 In SUP 9 we are proposing amendments so that the United Kingdom Listing Authority (UKLA) can provide individual guidance in an efficient and economical manner. In particular we propose that we no longer respond to requests for individual guidance on a ‘no names’ basis.
- 7.4 This chapter will be of interest to listed issuers, their advisors, investors and substantial shareholders as currently defined in the Handbook Glossary.
- 7.5 The proposed amendments, if approved will be made under section 73A (Part 6 Rules), 138 (General rule-making power) and section 156 (General supplementary powers) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 7.

## Background to LR 11

- 7.6 LR 11 sets out the requirements that apply to transactions and arrangements between a listed company and related parties. Included in the definition of a ‘related party’ is, ‘a person who is (or was within the 12 months before the date of the transaction or arrangement) a substantial shareholder’. ‘Substantial shareholder’ is itself defined in the Glossary to the Handbook as ‘any person who is entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company’.
- 7.7 We have encountered a number of situations where, for example, investment banks may hold shares for relatively brief periods of time as a result of arranging or facilitating block trades between shareholders and other investors. Where the amount of shares being traded either taken alone or in conjunction with other holdings of the investment bank represent 10% or more of the voting rights of the issuer, this creates a related party relationship between the issuer and the investment bank. This triggers a series of obligations, as set out in LR 11, on the issuer, as well as on the bank, to identify further related party transactions and to ensure that the LR requirements for those are fully complied with.
- 7.8 We do not consider that the imposition of such obligations is proportionate in such situations, where the shares are held for only a very short period and as an incidental consequence of arranging transactions for other parties.

### *Proposed Handbook amendments*

- 7.9 We propose to delete the current definition of ‘substantial shareholder’ from the Handbook Glossary and to re-define the term in LR 11.1.4AR. LR 11.1.4AR(1) reflects the existing text of the definition in the Handbook Glossary. LR 11.1.4AR(2) describes the conditions in which voting rights being held by a person in specific circumstances will be disregarded for the purpose of calculating voting rights. These conditions are where:
- the securities to which the voting rights are attached are held for a consecutive period of five trading days or less; and
  - voting rights are not exercised within the period the securities are held; and
  - no attempt is made directly or indirectly by the person to intervene or exert influence on the management of the issuer within the period the securities are held.
- 7.10 As a result of these changes a number of existing terms from the Glossary will be added to Appendix 1.1.1.

**Q7.1:** Do you agree with our proposal to delete the current definition of ‘substantial shareholder’ from the Glossary and with our proposed re-definition at LR 11.1.4AR? Do you agree with our proposal at LR 11.1.4AR(2)?

## Cost benefit analysis

- 7.11 Section 155 of FSMA requires us to publish a cost-benefit analysis of the implications of the proposed amendments. The requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 7.12 Given the nature of the proposed changes, we do not envisage that they will lead to a cost increase of more than a minimal significance.

## Background to SUP 9

### *The UKLA helpdesk and the provision of individual guidance*

- 7.13 The UKLA helpdesk is the method by which we provide market participants with individual guidance. Providing individual guidance is an important function of the FSA, which is described in the FSA Handbook at SUP 9.2. Requests for individual guidance may currently be made in writing or orally. If oral queries raise complex or significant issues, we will normally expect the details of the request to be confirmed in writing. We will aim to respond quickly and fully to reasonable requests. We will expect the person making the request for individual guidance to have taken reasonable steps to research and analyse a topic before approaching the FSA.
- 7.14 The UKLA has previously allowed requests for individual guidance to be made on a 'no names' basis, where the advisor does not wish to provide us with the identity of the issuer to which the query relates. Within the FSA this practice is unique to the UKLA.
- 7.15 In 2010 we carried out a Market User Survey and set out the main findings in our newsletter List! Issue 26.<sup>20</sup> In response to the findings of this survey, we carried out a fuller review of the UKLA Helpdesk function to enable us to respond on a more informed basis to some of the feedback we had received. We will inform market participants of the full details of the UKLA helpdesk review and about our proposals for providing individual guidance in a forthcoming edition of our newsletter. But we need to consult now on two rule changes that are necessary to enable some of these changes to go ahead.

### *Issues raised by 'no name' queries*

- 7.16 The review of the UKLA helpdesk confirmed that the majority of calls received are on the 'no names' basis outlined above. We recognise that advisors value the flexibility of being able to request technical guidance on this basis. But our view is that doing this raises a number of significant risks, both for the UKLA and for advisors seeking to rely on the guidance provided.

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20 [www.fsa.gov.uk/library/other\\_publications/ukla/2010](http://www.fsa.gov.uk/library/other_publications/ukla/2010)

- 7.17** We are often in the position of being asked to provide individual guidance when we are not in a fully informed position on the facts of the case. This is a risk in itself but it also means that when we are formally approached on a named basis, and we can see the whole context of the case, we may have to re-open advice previously given on a much shorter timescale. This does not represent an efficient use of our resources and does not produce a satisfactory outcome for the advisor and the issuer.
- 7.18** Our review of the UKLA helpdesk also showed that a significant number of telephone queries are not technical or they are straightforward enough that they should be capable of being answered without using the helpdesk. Operating and resourcing the UKLA helpdesk has a direct and significant effect on our ability to carry out our other core functions. When allocating our resources we have to be aware of our statutory duty to ensure that we use our resources in the most efficient and economic way.

### *Proposed changes*

- 7.19** We propose to no longer to accept requests for individual guidance which are made on a ‘no names’ basis. This will bring the UKLA practice into line with that of the FSA more generally.
- 7.20** Under our proposals, issuers and their advisors would still be able to make requests for individual guidance in writing, on a named basis, which the UKLA, except in the case of simple queries, would respond to in writing within the current turnaround times. In cases of exceptional urgency, we would be prepared to receive requests orally and would retain a stand-alone telephone line for this purpose. The listing applications telephone line and the administrative queries telephone line would remain available, each with its own separate contact number. Revised contact details will be confirmed in due course.
- 7.21** Our view is that this proposed model removes the risk for both the UKLA and the issuers and advisors of providing advice on a ‘no names’ basis. We believe that submitting requests for individual guidance in writing would result in their being ‘reasonable requests’ for guidance and that the UKLA would be less likely to be used as the first port of call for technical advice. Issuers and their advisors would, in turn, benefit from receiving guidance from the UKLA which is binding and in written form.

### *Proposed Handbook amendments*

- 7.22** We propose to implement these changes by deleting SUP 9.2.4AG and through deleting the reference to SUP 9.2.4AG in SUP 9.2.4G. We propose to amend SUP 9.2.1G to make it clear that requests for individual guidance in relation to FSMA Part VI should be made in writing, except in cases of exceptional urgency.
- 7.23** To mirror these changes in other relevant parts of the Handbook we propose to insert new rules at LR 1.2.6G, DTR 1.2.5G and DTR 1A.2.5G.



**Q7.2:** Do you agree with our proposed changes to SUP 9.2.4G, SUP 9.2.1G and SUP 9.2.4AG? Do you agree with our proposed new rules at LR 1.2.6G, DTR 1.2.5G and DTR 1A 2.5G?

### **Cost benefit analysis**

- 7.24** Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 7.25** Given the nature of the proposed changes, we do not envisage that they will lead to a cost increase of more than a minimal significance.

### **Compatibility statement**

- 7.26** In presenting the proposals set out in this chapter, we are satisfied that they are compatible with the general duties we have under section 73 of FSMA.

#### *The need to use our resources in the most efficient and economic way*

- 7.27** Our proposals for the UKLA regarding providing individual guidance will allow us to use our resources in a more efficient and economic way.
- 7.28** Our proposals in relation to the provision of individual guidance by the UKLA will allow us to use our resources in a more efficient and economic way. Our proposals in relation to the definition of substantial shareholders remove obligations on firms that are not proportionate to the benefits of those obligations.

#### *The desirability of facilitating innovation for listed securities*

- 7.29** We do not consider that our proposals have a direct effect on this duty.

#### *The international character of the capital markets and the desirability of maintaining the competitive position of the UK*

- 7.30** We do not consider that our proposals have a direct effect on this duty.

#### *The need to minimise the adverse effects on competition of anything done in the discharge of the FSA's functions*

- 7.31** We do not consider that our proposals have a direct effect on this duty.

*The desirability of facilitating competition for listed securities*

7.32 We do not consider that our proposals have a direct effect on this duty.

## **Equality and diversity issues**

7.33 We have concluded that the proposals set out in this chapter are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

### **Contact**

**Comments should reach us by 6 May 2012. Please send them to:**

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# 8

## Proposed changes to the Collective Investment Schemes sourcebook

### Introduction

- 8.1** This chapter proposes amendments to the Collective Investment Schemes sourcebook (COLL) and other parts of the FSA Handbook to enable the FSA to authorise another two legal forms of collective investment scheme (in addition to unit trusts and open-ended investment companies): co-ownership schemes and limited partnership schemes.
- 8.2** In order for us to have the legal authority to do this, HM Treasury (the Treasury) is consulting separately on the necessary changes to FSMA and other legislation. That consultation<sup>21</sup> closes on 19 March 2012.
- 8.3** The proposed amendments to the Handbook, if approved, will be made under section 138 (General rule-making power), section 139(4) (Miscellaneous ancillary matters), section 156 (General supplementary powers), section 157(1) (Guidance), section 247 (Trust scheme rules), section 248 (Scheme particulars rules), section 261C (Applications for authorisation of contractual schemes), section 261H (Contractual scheme rules), and section 261I (Contractual scheme particulars rules) of the Financial Services and Markets Act 2000 (FSMA); regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (OEIC Regulations) and the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- 8.4** In respect of the amendments to the Dispute Resolution sourcebook (DISP) and associated Glossary definitions, this chapter is a joint consultation by the FSA and the Financial Ombudsman Service (FOS). The FOS would make these amendments using the powers in

<sup>21</sup> HM Treasury, *Consultation on contractual schemes for collective investment*, (January 2012) [www.hm-treasury.gov.uk/d/consult\\_contractual\\_schemes090112.pdf](http://www.hm-treasury.gov.uk/d/consult_contractual_schemes090112.pdf)

section 227 (Voluntary Jurisdiction), paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme) and paragraph 18 (The Voluntary Jurisdiction) of Schedule 17 of FSMA.

- 8.5 The text of the proposed amendments is set out in Appendix 8. The amendments are drafted on the basis of the changes to FSMA and other legislation being consulted on by the Treasury. If the text of the changes finally made differs from that consulted on by the Treasury, we will need to review, and possibly alter, our proposed amendments accordingly. Respondents should note that their responses may be shared with the Treasury.

## Authorised contractual schemes (ACS)

### *Background*

- 8.6 The current regulatory framework in the UK allows the FSA to authorise two different legal forms of collective investment scheme: an authorised unit trust (AUT) or an open-ended investment company (OEIC) (known in the FSA Handbook as an investment company with variable capital (ICVC)). The Treasury has recently issued a consultation proposing to introduce two new regulated, tax-transparent fund vehicles: co-ownership schemes and limited partnership schemes. Collectively, these are referred to as ‘authorised contractual schemes’ or ‘ACS’.
- 8.7 The draft regulations contained in the Treasury’s consultation set out the main aspects of the legal structure of co-ownership and limited partnership schemes. In a co-ownership scheme, the participants own the assets beneficially as tenants in common (in Scotland, the assets are the common property of the participants). The scheme has no legal personality distinct from the persons who take part as investors and assets are acquired, managed and disposed of directly on their behalf by the manager, while the depositary holds legal title as a custodian. A limited partnership scheme is a limited partnership under the Limited Partnerships Act 1907 (as amended).
- 8.8 ACS will be tax transparent, meaning that for direct tax purposes, investors are treated as if they had invested directly in the underlying assets and are subject to tax accordingly. Statutory powers to make regulations covering the tax treatment of the new vehicles were published in draft on 6 December 2011 and will, along with the associated regulations, be finalised in late summer 2012. The scheme itself will not be subject to corporation, income or capital gains tax, which differs from the treatment of AUTs or OEICs which are legal entities for the purposes of tax legislation and so not tax transparent.

### *Amendments to COLL: general approach*

- 8.9 Given that an ACS is simply a different type of legal form of collective investment scheme with a different fiscal treatment from the existing types of authorised collective investment scheme, we propose to apply COLL in its entirety to ACS, making amendments where

necessary. This means that just as for AUTs and ICVCs, ACS can similarly be created as undertakings for collective investment in transferable securities (UCITS) schemes, non-UCITS retail schemes (NURS) or qualified investor schemes (QIS).

- 8.10** In practical terms, applying COLL to ACS means that we have treated ACS in the majority of cases in the same way as AUTs. The reason for this approach is the similarity in the nature of the investor protection features required notwithstanding the differences in the legal form.
- 8.11** To enable the required consequential changes throughout COLL to support the introduction of ACS, we propose to add a new definition to the Glossary – ‘authorised contractual scheme’ (ACS). This has allowed us to include ACS within the scope of provisions currently applying to AUTs by inserting a reference to ACS. We have also replaced references to the manager or trustee of an AUT with references to the authorised fund manager (AFM) or depositary of an AUT or ACS, to bring ACS within scope of the relevant rules and guidance.
- 8.12** There are, however, some differences between the treatment of ACS and AUTs in COLL. For example, we have specifically amended or not included within the scope of the provisions for an ACS the transfer of units and ‘box management’. Our proposed rules on winding-up ACS contain aspects of the current regime for both AUTs and ICVCs. Further, taking into account that the Treasury proposes that limited partnership schemes cannot be authorised as ‘umbrella’ structures, we have amended COLL to reflect this distinct feature.
- 8.13** For the purposes of this consultation paper we will identify and explain only the areas where we have treated ACS materially differently to AUTs, ie variations from our general approach to AUTs.
- 8.14** In their consultation, the Treasury asks some questions about the FSA rules and guidance that could apply to ACS. We will take account of responses received to that document as well as this consultation in taking forward our proposals.

**Q8.1:** Do you agree with our general approach to base the COLL rules for ACS on those for AUTs?

### *Umbrella structures*

- 8.15** The Treasury has expressed the view in its consultation that there is unlikely to be significant commercial demand for the authorisation of limited partnership schemes as umbrella structures and excluded the option of the FSA authorising a limited partnership scheme with sub-funds. On this basis we have clarified in COLL 1.2.1AG, that any authorised scheme, except for an ACS that is a limited partnership scheme, may be structured as an umbrella with separate sub-funds. In addition, we have applied COLL 3.3.10G to AFMs of co-ownership schemes, but not to any AFMs of limited partnership schemes.

- 8.16** In respect of co-ownership schemes, the Treasury is consulting on provisions which would allow their authorisation as either stand-alone schemes or umbrella schemes. In the case of the latter the consultation includes specific provisions providing for segregated liability of sub-funds.
- 8.17** In line with COLL, for similar ‘protected cell’ structures for OEICs, we are consulting on amending the disclosure requirements in the instrument and prospectus of a co-ownership scheme umbrella by inserting new rules. Any co-ownership scheme that is set up as an umbrella will have to include a statement in both its instrument and prospectus explaining that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund and must not be used to discharge any liabilities of the participants in any other sub-fund. We will also apply the ‘warning’ notice (COLL 4.2.5R(2A)(b)) so that the prospectus of any co-ownership scheme which is an umbrella will include a statement explaining that, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how these foreign courts will react to section 261N of FSMA.
- 8.18** Equally, in line with the duties of the authorised corporate director (ACD) of an ICVC under the protected cell regime, we are proposing to require the AFM of an ACS, where it has reasonable grounds to consider that a foreign law contract entered into on behalf of the ACS may have become inconsistent with the principle of limited recourse, to promptly investigate and, if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency. We are also consulting on applying the guidance in COLL 6.6.5BG to AFMs of ACS, which clarifies the steps we deem to be appropriate to remedy any inconsistencies with respect to foreign law contracts. The same has been applied to QIS in COLL 8.5.3AR and COLL 8.5.3BG.

**Q8.2:** Do you agree with our proposals for co-ownership umbrella schemes?

*Transfer of units*

- 8.19** Section 6(5) of the 1907 Limited Partnerships Act allows a limited partner, with the consent of the general partner, to assign its partnership share. The Treasury proposes to modify this provision to prohibit the assignment of partnership shares (transfer of units) except where assignment is permitted by the FSA rules. This is in line with the provisions made by the Treasury for the transfer of units in relation to co-ownership schemes. The deed constituting the co-ownership scheme must (amongst others) prohibit the transfer of units except where transfer is permitted by the FSA rules.
- 8.20** ACS are transparent for fiscal purposes, meaning that the ACS itself is not a taxable entity and suffers no tax directly. Units in ACS will in general not be transferable; this is to support their status as being tax transparent. Since investors own a share in the underlying assets as ‘tenants in common’, they will generally only be able to redeem units to dispose of their share of the underlying assets. However, there may be some circumstances in which

there are practical or commercial reasons for allowing units to be transferred, such as in the merging or reconstructing of unitholders, or transfers upon death.

- 8.21** Therefore, we are consulting on a limited range of permitted transfer scenarios, including where the transfer is required by operation of law. Respondents should note that the Treasury has specifically requested comments on this issue in their consultation and so our final rules will be affected by any decisions made by the Treasury on the legislative requirements in this area.
- 8.22** We propose that any type of ACS, whether it is set up as a UCITS, NURS or QIS, should include a statement in the constituting instrument outlining that units are not transferable except where permitted in these specific circumstances. This new provision has been inserted in COLL 3.2.6R(27E) for UCITS and NURS and in COLL 8.2.6R(2)(6)(a)(iv) for QIS. We will not require the AFM of an ACS to disclose such information in the scheme's prospectus. Additionally, we want to point out that we have not included ACS within the scope of COLL 6.2.16R(10). We believe that this provision will not be applicable to ACS, as AFMs will not be able to list and trade these schemes on an investment exchange.

**Q8.3:** Do you agree with our proposals regarding transfer of units in an ACS?

### *Box management*

- 8.23** One further consequential change deriving from restrictions on the transfer of units in an ACS, and to support their status as being tax transparent, relates to the operation of a 'box' by the AFM. Currently the AFM of an AUT or ICVC can hold unregistered units for its own account in a 'box'. To support the proposed transferability conditions relating to ACS, we are consulting on prohibiting the AFM of an ACS from holding a box or trading units from one investor to another via the box. This means that the AFM of an ACS will have to cancel and create units accordingly when investors redeem from and subscribe to the scheme. AFMs will still be able to hold units in co-ownership schemes themselves for 'investment purposes', but for limited partnership schemes it will not be possible for the operator (who will be the scheme's general partner) to also be an investor (limited partner).
- 8.24** To affect the above policy proposal we are consulting on amending COLL 6.2.2G(2) and (4) and COLL 6.2.8R. COLL 6.2.8R(1) currently requires the AFM of an AUT or OEIC to ensure that at each valuation point there are at least as many units in issue as there are units registered to unitholders. Circumstances in which there are more units in issue than unitholders registered are dealt with by COLL 6.4.5R(1): if no person is entered in the register as the unitholder of a unit, the manager must be treated as the unitholder of each such unit which is in issue (other than a unit which is represented by a bearer certificate).
- 8.25** We are not proposing to extend the scope of COLL 6.2.8R(1) and (3), COLL 6.4.5R and COLL 6.5.9R to AFMs of an ACS. Instead, the AFM of the ACS will have the responsibility

to ensure that the number of units in issue equals the number of units registered to unitholders (COLL 6.2.8R(4)). There should not be any circumstances in which an AFM of an ACS becomes an unregistered unitholder in the scheme. As a result of these amendments, we believe that the AFM of an ACS will not be able to manage a box. Please note that we have inserted similar new provisions for QIS in COLL 8.5.10R.

**8.26** In addition, for clarification purposes, we have narrowed the scope of COLL 6.2.11R, which deals with box management errors, and applied it solely to AFMs of AUTs and OEICs.

**Q8.4** Do you agree with our policy proposal to stop the AFM of an ACS from operating a box? Do our proposed amendments to COLL achieve this outcome?

**Q8.5** Do you have any other comments on our proposed amendments to COLL?

### *Amendments to the remainder of the Handbook*

**8.27** We are proposing a number of new terms for the Glossary of definitions and amending other existing terms – particularly where a term currently contains a reference to an AUT, we are extending this to include a reference to ACS. We are not proposing to amend the definitions of ‘SDRT provision’ or ‘individual pension account’ as this seems unnecessary based on the proposed treatment of ACS.

**8.28** We are also proposing consequential amendments throughout the rest of the Handbook, as proposed in Appendix 8. In terms of the application of the Disclosure Rules and Transparency Rules (DTR) to ACS (see Annex U to the proposed Handbook instrument), we note that ACS will already be subject to the requirements to produce both a full prospectus and also a simplified investor disclosure document (from 1 July 2012 the key investor information document becomes mandatory for UCITS schemes). That being the case, we do not believe it is appropriate or intended by the relevant EU Directives that the DTR disclosure regime should also be applied to ACS in addition to the COLL disclosure regime.

**Q8.6** Do you agree with our proposed amendments to the Glossary and other parts of the Handbook? Are there any other consequential amendments we need to make?



## Cost benefit analysis

- 8.29** Section 155 of FSMA requires us to publish a cost benefit analysis (CBA) of the implications of our proposed amendments. The requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 8.30** These rules introduce a regime for authorised contractual schemes into our Handbook. The decision to launch an ACS is purely voluntary and existing AUT and OEIC vehicles remain available as authorised product structures. Therefore, any costs within this process are incurred on a voluntary basis. The Treasury's consultation paper includes a general impact assessment on the introduction of the new types of scheme.

## *Structure and governance of authorised schemes*

- 8.31** Assuming the Treasury and our proposals are enacted, there will be four different types of legal structure for UK authorised investment schemes.
- Authorised unit trusts – a unit trust is constituted by the manager and trustee entering into a trust deed. The manager and trustee must both be authorised persons and independent of each other.
  - Investment companies with variable capital (ICVCs) – an ICVC is an open-ended investment company. It is a corporate vehicle with a Board, and typically there is only one director, the ACD. An ICVC has a depositary. The ACD and depositary must both be authorised persons and independent of each other.
  - Co-ownership schemes – a co-ownership scheme will be constituted by the operator and depositary entering into a deed. The operator is responsible for the management of the scheme and its property. The operator and depositary must both be authorised persons and independent of each other.
  - Limited partnerships – a limited partnership scheme will be formed by deed. The general partner will be the scheme operator and the depositary will be a limited partner. The operator and depositary must both be authorised persons and independent of each other.
- 8.32** Legislation that is relevant to these different types of scheme includes FSMA, the Open-Ended Investment Companies Regulations 2001 and the Limited Partnerships Act 1907. In addition, general trust law is relevant to unit trusts. It can be seen that it is not possible for exactly the same requirements to apply to each type of scheme because of their structural differences. Nevertheless, there are common investor protection features across the schemes, such as the need for independence of the depositary from the party responsible for the management of the scheme. In general, COLL applies equivalent provisions across different types of scheme where appropriate, but this does not mean that exactly the same rules apply to each type of authorised scheme. Equally, there are other types of pooled investment available to retail consumers (eg unit-linked insurance products, investment trusts) that are subject to different legislative regimes than authorised investment schemes.

- 8.33** In general, we have applied existing rules for authorised schemes, in particular those for AUTs, to the new ACS. So in this CBA we propose to analyse the key material differences between the regulatory regime which applies to the new ACS vehicle, as opposed to that in existence for the existing legal forms of authorised schemes - ICVCs and AUTs. In this manner we are using the current regime in respect of ICVCs and AUTs as the baseline against which to compare the differing costs and benefits which may apply to ACS.
- 8.34** One material difference for our rules is the modification of certain provisions throughout COLL relating to umbrella schemes, with respect to the new limited partnership scheme. However, because these amendments are purely consequential (as a result of the Treasury proposing to exclude the possibility of us authorising a limited partnership as an umbrella in their regulations), we have not carried out a CBA of the related changes to our rules we have had to make. The Treasury takes the view that ‘there is unlikely to be significant commercial demand for the authorisation of [limited] partnership schemes as umbrella schemes’, but ask respondents to their consultation to confirm this view.
- 8.35** The second material difference compared to the rules for AUTs and ICVCs relates to the restriction on transfer of units and the prohibition of box management. To some extent these are also consequential amendments, to support the tax transparency of the new schemes. However, we discuss below some of the relevant cost and benefit factors from these differences.
- 8.36** The operation of a ‘box’ can enable scheme managers to generate income for their own account from dealing as principal in the units of their scheme (eg, if a manager holds units in the box that it has bought back from a unitholder and is then able to sell them to a newly subscribing investor for a higher price.) Of course, there is no guarantee that the price will move in a manager’s favour. These potential flows will not be available to a manager of an ACS. Some managers hold a small buffer of units to avoid the situation where a dealing error results in a negative box.
- 8.37** The operation of a box itself will incur administrative costs which will not be incurred in an ACS. On the other hand, being able to hold units in a box can also result in operational efficiencies, as the process for creation and cancellation of units does not always need to be carried out if the ‘stock’ of units in the box is sufficient. These costs and benefits accrue to the scheme manager.
- 8.38** The restrictions being placed on transfers and box management support the need for ACS to be seen as fully transparent for tax purposes. Investors choosing this type of vehicle are likely to do so because the fiscal and operational consequences are more beneficial for them than the alternatives.
- 8.39** Unlike AUTs and ICVCs, ACS will incur no charge to tax under schedule 19 of the Finance Act 1999. Schedule 19 is applied to schemes as a proxy for the principal Stamp Duty Reserve Tax (SDRT) charge on the transfer of UK securities. It is applied because subscribing for/ surrendering units does not attract a principal SDRT charge. This means that if a manager

receives units from one investor and then sells them to another investor (without conducting any transactions involving the scheme's assets) then an interest in the underlying UK securities has been transferred without an SDRT charge arising. Schedule 19 is charged on scheme managers on surrenders of units to act as a proxy for this 'missing' principal SDRT. Restricting the transferability of units and the ability to carry out box management 'protects' the principal SDRT charge and so mitigates the need to apply schedule 19 to ACS.

- 8.40** Where it is incurred, schedule 19 is paid out of the assets of the scheme. In comparison with an AUT or ICVC, there will be savings for an ACS in terms of not having to carry out the administration associated with schedule 19, which will be of benefit to investors. However, the new type of ACS is expected to be attractive to large investors (eg UCITS feeders or pension funds) and the number of direct retail investors into ACS is expected to be low. This should mean that, compared to a retail scheme, the restrictions on unit transfer have less of an operational effect on the manager.
- 8.41** In cases where a unitholder would have transferred units and now instead has to carry out a redemption and then the transferee a subscription, there may be administrative inconvenience and possibly an initial charge to pay on the new units.
- 8.42** The magnitude of these costs and benefits will differ from scheme-to-scheme and from manager-to-manager (relevant factors include the size of the scheme, the type of investor base, the assets in which the scheme is invested, the manager's approach to box management), so it is not possible to produce a meaningful single number that quantifies them. However, the Investment Management Association has supplied the following examples from their members which we include for illustrative purposes only.

	<b>Estimated administration costs relating to box management and administering SDRT</b>	<b>Comments</b>
Small manager (in lowest 30 companies based on funds under management)	£10,000	
Large manager 1 (in highest 30 companies based on fund manager (in middle 30 based on funds under management)	1/10 <sup>th</sup> of a full-time employee	
Large manager 2 (in highest 30 companies based on fund manager (in middle 30 based on funds under management)	£100,000	Covers approximately £30bn of funds
Large manager 3 (in highest 30 companies based on fund manager (in middle 30 based on funds under management)	1/10 <sup>th</sup> of a full-time employee	Covers a £20bn+ umbrella fund with approximately 30 sub-funds

### *Potential market impacts*

- 8.43 The impact assessment in the Treasury's consultation illustrates the costs and benefits of a number of different policy scenarios (based on certain assumptions). They highlight that introducing tax transparent schemes is likely to prevent assets currently domiciled in the UK from relocating to other jurisdictions. This, in turn, 'translate[s] into retained UK corporate profits, retained UK jobs as well as other intangible benefits to the UK's reputation as an international financial centre of excellence.'

### **Compatibility statement**

- 8.44 Given that the legal regime for ACS will be introduced by the Treasury, we believe that our proposals (generally looking to apply similar requirements to those that currently apply to AUTs and ICVCs) contribute to securing an appropriate framework for investors and achieve our statutory objectives of consumer protection and market confidence.
- 8.45 We had regard to the principles of good regulation and consider that the relevant principles are those of proportionality (eg, our proposals are mainly based on rules that currently apply to the existing legal types of authorised schemes with which existing AFMs are familiar), facilitating innovation (creating a framework that allows the new legal types of scheme to operate) and those relating to competition.
- 8.46 As noted above in the 'potential market impacts' section, the Treasury is introducing the new legal forms of scheme to maintain the competitive position of the UK against other fund domiciles. Our rules allowing these schemes to function assist in this aim. To the extent that ACS act as competitors to AUTs and ICVCs, our proposals also facilitate competition between entities subject to regulation.

### **Equality and diversity issues**

- 8.47 We have assessed the equality issues that arise in our proposals. We believe that they do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

**Q8.7:** Do you have any comments on the cost-benefit analysis, compatibility statement or equality and diversity issues?

**Contact**

**Comments should reach us by 6 May 2012. Please send them to:**

Stefanie Thorns  
Investments Policy Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Telephone: 020 7066 1332  
Fax: 020 7066 1333  
E-mail: [cp12\\_05@fsa.gov.uk](mailto:cp12_05@fsa.gov.uk)

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## Appendix 1

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# List of Questions

### Chapter 3:

- Q3.1:** Do you agree with our proposal to amend BIPRU 12.7.3G?
- Q3.2:** Do you agree with our proposal to amend the notes for SUP 16.12.5R, SUP 16.12.11R and SUP 16.12.15R?
- Q3.3:** Do you agree with our proposal to amend FSA050 and FSA052?
- Q3.4:** Do you agree with the cost benefit analysis?

### Chapter 4:

- Q4.1:** Do you agree with our proposal to amend BIPRU 7.2 and BIPRU 9 to introduce the SRT requirement into the trading book?

### Chapter 5:

- Q5.1:** Do you agree that the pension scheme disclosure rules should be amended at the end of 2012 to remove exceptions applying to pension schemes described as 'SIPPs'?

If no, please indicate how our rules, or the in-force date, should be amended to ensure that consumers and their advisers can compare personal pension schemes investing in the same assets.

**Q5.2:** Do you agree that our rules should reflect firms' fiduciary duties and require disclosure of all commissions (and similar payments) that a pension scheme operator or pension scheme trustee receives in relation to assets held within the scheme (both bank and non-bank assets)?

**Q5.3:** Do you have any comments on the analysis of costs and benefits as they affect your firm?

## **Chapter 6:**

**Q6.1:** Do you agree with the proposal to increase the share account limit for credit unions in Great Britain to achieve consistency with the limit for credit unions in Northern Ireland?

**Q6.2:** Do you agree with the proposal to remove the limit on the number of joint shareholders in credit unions in Great Britain to achieve consistency with the rule for credit unions in Northern Ireland?

**Q6.3:** Do you agree with the proposal to amend CREDS and other parts of the FSA Handbook in order to update some sections and clarify some issues?

## **Chapter 7:**

**Q7.1:** Do you agree with our proposal to delete the current definition of 'substantial shareholder' from the Glossary and replace with our proposed re-definition at LR 11.1.4AR? Do you agree with our proposal at LR 11.1.4AR(2)?

**Q7.2:** Do you agree with our proposed changes to SUP 9.2.4G, SUP 9.2.1G and SUP 9.2.4AG? Do you agree with our proposed new rules at LR 1.2.6G, DTR 1.2.5G and DTR 1A 2.5G?



## Chapter 8:

- Q8.1:** Do you agree with our general approach to base the COLL rules for ACS on those for AUTs?
- Q8.2:** Do you agree with our proposals for co-ownership umbrella schemes?
- Q8.3:** Do you agree with our proposals regarding transfer of units in an ACS?
- Q8.4:** Do you agree with our policy proposal to stop the AFM of an ACS from operating a box? Do our proposed amendments to COLL achieve this outcome?
- Q8.5:** Do you have any other comments on our proposed amendments to COLL?
- Q8.6:** Do you agree with our proposed amendments to the Glossary and other parts of the Handbook? Are there any other consequential amendments we need to make?
- Q8.7:** Do you have any comments on the cost-benefit analysis, compatibility statement or equality and diversity issues?



## Appendix 2

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# Changes to Training and Competence sourcebook

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS  
AMENDMENTS NO 5) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 149 (Evidential provisions);
    - (c) section 156 (General supplementary powers); and
    - (d) section 157(1) (Guidance).
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Training and Competence sourcebook (TC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 5) Instrument 2012.

By order of the Board  
[*date*]

## Annex

## Amendments to the Training and Competence sourcebook (TC)

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

## Appendix 4E Appropriate Qualification tables

...

Qualification table relating to: Advising on <i>Packaged Products</i> (which are not <i>broker funds</i> ) and <i>Friendly Society</i> tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R		
Qualification	Qualification Provider	Key
...		
Diploma in Professional Financial Advice (NMBA – Alternative Assessment method)	Calibrand/Scottish Qualifications Authority	a
<u>Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on packaged products</u>	<u>CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management &amp; Research)</u>	<u>a</u>
...		



## Appendix 3

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# Proposed minor changes to the Liquidity regime

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 5)  
INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Liquidity Standards (Miscellaneous Amendments No 5) Instrument 2012.

By order of the Board

[*date*]



## Annex A

## Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

**12.3 Liquidity risk management**

...

- 12.3.7 G As well as the *rules* in BIPRU 12.3 requiring a *firm* to have robust systems to enable it to identify, measure, manage and monitor *liquidity risk*, an *ILAS BIPRU firm* is also subject to obligations in SUP 16 (Reporting requirements) requiring it to report quantitative data about its liquidity position to the *FSA*. That chapter of SUP sets out the applicable *data items* and the *rules* governing the frequency of their submission to the *FSA*. Absent a *firm-specific liquidity stress* or a *market liquidity stress*, the *rules* in SUP 16 do not require daily (weekly for a low frequency liquidity reporting firm and a simplified ILAS BIPRU firm) reporting of *data items*. An *ILAS BIPRU firm* should, however, note that those *rules* do require that it has systems in place to ensure that it is able at all times to meet the requirements for daily (or weekly as applicable) reporting of applicable *data items* even if there is no *firm-specific liquidity stress* or *market liquidity stress* and none is expected.

## Annex B

## Amendments to the Supervision manual (SUP)

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

## 16.12 Integrated Regulatory Reporting

...

## Regulated Activity Group 1

16.12.5 R ...

...	
Note 21	Note 20 applies, except that <del>paragraph</del> <u>paragraphs (3), (4) and (5)</u> <del>does</del> <u>do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

## Regulated Activity Group 3

...

16.12.11 R ...

...	
Note 30	Note 29 applies, except that <del>paragraph</del> <u>paragraphs (3), (4) and (5)</u> <del>does</del> <u>do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

## Regulated Activity Group 4

...

16.12.15 R ...

...	
Note 27	Note 26 applies, except that <del>paragraph</del> <u>paragraphs (3), (4) and (5)</u> <del>does</del> <u>do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.

...	
-----	--

...

Regulated Activity Group 7

...

16.12.22A R ...

Note 20	Note 19 applies, except that <del>paragraph</del> <u>paragraphs (3), (4) and (5) does do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

Regulated Activity Group 8

...

16.12.25A R ...

Note 25	Note 24 applies, except that <del>paragraph</del> <u>paragraphs (3), (4) and (5) does do</u> not apply, meaning that <i>material currencies</i> must not be recorded separately.
...	

...

**16 Annex 24R Data items for SUP 16.12R**

**FSA050**

**FSA050  
Liquidity Buffer Qualifying Securities**

Issuer	<b>A</b> Market value of identifiable securities or security baskets
--------	-------------------------------------------------------------------------------------

1 Australia

--

2	Austria	
...	...	
22	Other	
23	Supranational(s) <u>Designated multilateral development bank(s)</u>	
...	...	

**FSA052**

**FSA052**

**Pricing Data**

**Wholesale Liabilities (Raised during the week (standard frequency liquidity reporting firm) or month (low frequency liquidity reporting firm) ending with the reporting date)**

...

## Appendix 4

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# Significant Risk Transfer in the Trading Book

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND  
INVESTMENT FIRMS (SIGNIFICANT RISK TRANSFER) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 150(2) (Actions for damages);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Significant Risk Transfer) Instrument 2012.

By order of the Board  
[*date*]

## Annex

**Amendments to the Prudential sourcebook for  
Banks, Building Societies and Investment Firms (BIPRU)**

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

Specific risk: securitisations and resecuritisations

- 7.2.47 R (1) ~~[deleted]~~ The originator of a securitisation or a resecuritisation where the securitised exposures were held in the trading book may only exclude them from its calculation of its market risk capital requirement where a significant amount of risk associated with those exposures has been transferred in accordance with the terms of BIPRU 9.3, BIPRU 9.4 and BIPRU 9.5.
- (2) Where (1) applies, the originator must calculate the capital requirements for the positions it may hold in the securitisation or resecuritisation in accordance with BIPRU 7.2.48AR to BIPRU 7.2.48KR or BIPRU 9, as applicable.
- (3) Where the originator fails to transfer significant risk in accordance with (1), it need not calculate its market risk capital requirement for any positions it holds in the securitisation or resecuritisation in question.
- 7.2.47A G ~~[deleted]~~ For the purpose of BIPRU 7.2.47R, the following terms and  
R references in BIPRU 9.3, BIPRU 9.4 and BIPRU 9.5 are to be applied to securitisations and resecuritisations in the trading book in accordance with the following rules:
- (1) “risk weighted exposure amounts” in relation to securitisation or resecuritisation positions is to be construed as the specific risk portion of the interest rate PRR for such positions calculated in accordance with BIPRU 7.2.48AR to BIPRU 7.2.48KR;
- (2) “risk weight” in relation to securitisation or resecuritisation positions is to be construed as the appropriate PRA in accordance with the tables in BIPRU 7.2.48DR and BIPRU 7.2.48ER or in accordance with the supervisory formula method pursuant to BIPRU 7.2.48FR;
- (3) “risk weighted exposure amounts” in relation to securitised exposures is to be construed as the amount of market risk capital requirement for those exposures in accordance with BIPRU 7; and
- (4) subject to BIPRU 7.2.48K R, references to “credit quality steps” in the definition of mezzanine securitisation positions is to be construed as credit quality steps in the tables in BIPRU 7.2.48DR and BIPRU

7.2.48ER as appropriate.

7.2.47B G ~~[deleted]~~ Securitisation positions in the correlation trading portfolio are not  
R to be subject to BIPRU 7.2.47R.

...

7.2.48 G ~~[deleted]~~ Investors in securitisation and resecuritisation positions in the  
trading book will have to meet the requirements in BIPRU 7.2.48AR to  
BIPRU 7.2.48KR and BIPRU 9.15.

...

7.2.48H G (1) ~~Originators, investors and sponsors of securitisations in the trading~~  
R ~~book will have to meet the requirements of BIPRU 9.3.1AR, BIPRU~~  
~~9.3.15R to BIPRU 9.3.20R and BIPRU 9.15~~ A firm must not use the  
specific risk PRAs in BIPRU 7.2.48DR and BIPRU 7.2.48ER unless it  
complies with the principles on credibility and transparency set out in  
BIPRU 9.7.2R.

(2) An ECAI's credit assessment may be used to determine the  
appropriate PRAs in BIPRU 7.2.48DR and BIPRU 7.2.48ER only if  
the ECAI is an eligible ECAI.

...

## Trading book and non-trading book

9.1.9 G BIPRU 9 deals with:

...

(3) the requirements that investors, *originators* and *sponsors* of  
*securitisations* in the *trading book* will have to meet (~~BIPRU 9.3.1AR,~~  
~~BIPRU 9.3.15R to BIPRU 9.3.20R,~~ BIPRU 9.6.1AR BIPRU 9.3,  
BIPRU 9.4, BIPRU 9.5, BIPRU 9.6.1AR and BIPRU 9.15).

9.1.10 G (1) BIPRU 7 sets out the calculation of the market risk capital  
requirement for ~~securitisation positions~~ *securitisation positions* held in  
the *trading book*, including specific rules for those held in the  
*correlation trading portfolio*.

(2) Originators of securitisations in the trading book are also subject to  
the significant risk transfer rule in BIPRU 7.2.47R, which cross-refers  
to BIPRU 9.3, BIPRU 9.4 and BIPRU 9.5.

...

9.3.1 R (1) ...

(2) Where (1) applies, the *originator* must calculate the *risk weighted*  
*exposure amounts* prescribed in this chapter or the market risk capital



*requirement in accordance with BIPRU 7, as applicable, for the positions it ~~may hold~~ holds in the securitisation.*



## Appendix 5

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# Pension scheme disclosure proposals

**CONDUCT OF BUSINESS SOURCEBOOK (PENSION SCHEME DISCLOSURE)  
INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [31 December 2012].

**Amendments to the Handbook**

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Conduct of Business Sourcebook (Pension Scheme Disclosure) Instrument 2012.

By order of the Board  
[*date*]

## Annex

## Amendments to the Conduct of Business sourcebook (COBS)

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

13.4.1 R *A key features illustration must include appropriate charges information, information about any interest that will be paid to clients on money held within a personal pension scheme bank account and, if it is a packaged product which is not a financial instrument:*

(1) must include a *standardised deterministic projection*;

...

...

13.4.4 R There is no requirement under COBS 13.4.1R to include a *projection* in a *key features illustration*:

(1) ...; or

(2) if the product is:

(a) ~~a SIPP from which no income withdrawals are being taken (but if the SIPP is being used to contract out of the State Second Pension, the key features illustration must include a projection for an appropriate personal pension and a contracting out comparison, for those benefits); or~~

(b) a life policy that will be held in a CTF or sold with basic advice (unless the policy is a stakeholder pension scheme).

...

### 13 Annex 2 Projections

This annex belongs to COBS 13.4.1R (Contents of a key features illustration), COBS 13.5.1R (Projections for in-force products) and COBS 13.5.2R (Projections: other situations).

...

G		
2.7	...	
	(7)	<u>If a personal pension scheme is invested in assets that are volatile or difficult to value, the standardised deterministic projection should be prepared using the best available reasonable assumptions.</u>

...

### 13 Annex 3 Charges

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

R	
Charges	
1	Appropriate charges information
1.1	Appropriate <i>charges</i> information comprises:
	(1) a description of the nature and amount of the <i>charges</i> a <i>client</i> will or may be expected to bear;
	(2) an ‘effect of charges’ table; <del>and</del>
	(3) ‘reduction in yield’ information; <u>and</u>
	(4) <u>in relation to a <i>personal pension scheme</i>, the amounts (or if the amounts cannot be given, the formula by which the amounts can be calculated), if any, which a <i>personal pension scheme operator</i> or <i>pension scheme trustee</i> will receive as commission (or similar payment) or as retained interest in relation to money or other assets held within the <i>personal pension scheme</i>.</u>
1.2	...
1.2A	<u>The appropriate charges information described in 1.1(4) must be disclosed alongside information about any other <i>charges</i> the <i>client</i> will be expected to bear, and information about any interest that will be paid to <i>clients</i> on money held within a <i>personal pension scheme</i> bank account.</u>
Exceptions	
1.3	An effect of charges table and reduction in yield information are not required for:
	(1) ...
	(2) <del>a <i>SIPP</i></del> <u>[deleted]</u> ;
	(3) ...
...	

...

The provision rules

14.2.1 R A firm that sells:

...

(3) the variation of a *life policy* or *personal pension scheme* to a *retail*

*client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation (~~unless the policy or scheme is a SIPP~~);

- (3A) the variation of a ~~SIPP~~ *personal pension scheme* to a *retail client*, to contract out of the State Second Pension, must provide the *client* with a *projection* for an *appropriate personal pension* and a *contracting-out comparison* for those benefits together with such additional information as is necessary for the *client* to understand the consequences of the variation;

...

on condition that it complies with each of the other *rules* in this section in relation to the provision of the document, as if references in those *rules* to a “*key features document*” or “*simplified prospectus*” were a reference to the “NURS KII document”.

...





## Appendix 6

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# Credit Unions

**CREDIT UNIONS NEW SOURCEBOOK (CONSEQUENTIAL  
AMENDMENTS NO 2) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 149 (Evidential provisions);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 213 (The compensation scheme);
    - (f) section 214 (General);
    - (g) section 226 (Compulsory jurisdiction); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FSA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The modules of the FSA’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)
Supervision manual (SUP)	Annex A
Compensation sourcebook (COMP)	Annex B
Credit Unions New sourcebook (CREDS)	Annex C

**Notes**

- E. In Annex A (SUP) 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**

- F. This instrument may be cited as the Credit Unions New Sourcebook (Consequential Amendments No 2) Instrument 2012.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Supervision manual (SUP)

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

[*Editor's Note:* The following amendments are made against the text of the Credit Unions New sourcebook (CREDS), except where indicated otherwise.]

Amend the following as shown.

## 16 Annex 14(1) R Quarterly return (CQ) for credit unions

....

**Interest-bearing shares****Interest-bearing shares**

	£	
Total shares	_____	10A
<i>(transferred from 1A on CQ)</i>		
Interest-bearing shares	_____	10B
Dividend-bearing shares	_____	10C

**Deferred shares****Deferred shares**

Total shares	_____	11A
<i>(transferred from 1A on CQ)</i>		
Non-deferred shares	_____	11B
Deferred shares	_____	11C

**Reserves – total**

Audited reserves – General	_____	12A
<i>(transferred from 5A on CQ)</i>		
Audited reserves – Other	_____	12B
<i>(transferred from 5B on CQ)</i>		
Revaluation reserve – non-capital element	_____	12C
Deferred share reserves	_____	12D
Reserves	_____	12E

**Reserves – percentage**

Total assets	_____	12F
<i>(transferred from 4A on CQ)</i>		
Reserves as % of total assets	_____	12G

**Corporate membership**

**Corporate members**

Number of members at the end of the quarter		<u>12A</u> <u>13A</u>
<i>(transferred from 1a on CQ)</i>	_____	
Individuals		<u>12B</u> <u>13B</u>
Bodies corporate	_____	<u>12C</u> <u>13C</u>
Partnerships	_____	<u>12D</u> <u>13D</u>
Unincorporated associations	_____	<u>12E</u> <u>13E</u>

**Corporate non-deferred shares**

Non-deferred shares		<u>13A</u> <u>14A</u>
<i>(transferred from 11B above)</i>	_____	
Individual non-deferred shares		<u>13B</u> <u>14B</u>
Body corporate non-deferred shares	_____	<u>13C</u> <u>14C</u>
Partnership non-deferred shares	_____	<u>13D</u> <u>14D</u>
Unincorporated association non-deferred shares	_____	<u>13E</u> <u>14E</u>

**Corporate deferred shares**

Deferred shares		<u>14A</u> <u>15A</u>
<i>(transferred from 11C above)</i>	_____	
Individual deferred shares		<u>14B</u> <u>15B</u>
Body corporate deferred shares	_____	<u>14C</u> <u>15C</u>
Partnership deferred shares	_____	<u>14D</u> <u>15D</u>
Unincorporated deferred shares	_____	<u>14E</u> <u>15E</u>

**Corporate loans**

Total loans to members		<u>15A</u> <u>16A</u>
<i>(transferred from 1B on CQ)</i>	_____	
Individual loans		<u>15B</u> <u>16B</u>
Body corporate loans	_____	<u>15C</u> <u>16C</u>
Partnership loans	_____	<u>15D</u> <u>16D</u>
Unincorporated association loans	_____	<u>15E</u> <u>16E</u>

**Reserves and capital – adjusted for deferred share and revaluation reserves****Re-valued total assets**

<u>Total assets</u>	_____	<u>16A</u>
<i>(transferred from 4A on CQ)</i>		
<u>Revaluation amount</u>	_____	<u>16B</u>
<u>Re-valued total assets</u>	_____	<u>16C</u>

**Adjusted reserves - total**

<u>Audited reserves – General</u>	_____	<u>17A</u>
<i>(transferred from 5A on CQ)</i>		
<u>Audited reserves – Other</u>	_____	<u>17B</u>
<i>(transferred from 5B on CQ)</i>		
<u>Revaluation reserves</u>	_____	<u>17C</u>
<u>Deferred share reserves</u>	_____	<u>17D</u>
<u>Adjusted reserves</u>	_____	<u>17E</u>

**Adjusted reserves - percentage**

<u>Adjusted reserves as % of re-valued total assets</u>	_____	<u>18A</u>
---------------------------------------------------------	-------	------------

**Revaluation reserves – CREDS capital element**

<u>Total capital</u>	_____	<u>19A</u>
<i>(transferred from 5E on CQ)</i>		
<u>Deferred share reserves</u>	_____	<u>19B</u>
<u>Total capital and deferred share reserves</u>	_____	<u>19C</u>
<u>1/3 of (Total capital and deferred share reserves)</u>	_____	<u>19D</u>
<u>Revaluation reserves</u>	_____	<u>19E</u>
<u>Revaluation reserves – CREDS capital element</u>	_____	<u>19F</u>

**Adjusted capital - total**

<u>Total capital and deferred share reserves</u>	_____	<u>20A</u>
<i>(transferred from 19C above)</i>		
<u>Revaluation reserve – CREDS capital element</u>	_____	<u>20B</u>
<i>(transferred from 19F above)</i>		
<u>Adjusted capital</u>	_____	<u>20C</u>

**Adjusted capital - percentage**

<u>Adjusted capital as % of re-valued total assets</u>	_____	<u>21A</u>
--------------------------------------------------------	-------	------------

**NOTE:** A credit union should use the figures for re-valued total assets and adjusted capital when reporting large exposures and risk-adjusted capital-to-assets in the main body of the CQ. Further guidance is provided in the Notes on completing the CQ.

## 16 Annex 14(2) R Annual return (CY) for credit unions

....

**SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN****Interest bearing shares****Interest-bearing shares**

	£	
Members' share balances	_____	33A
<i>(transferred from 2T on CY)</i>		
Interest-bearing shares	_____	33B
Dividend-bearing shares	_____	33C

**Interest expenditure**

Expenditure – Other	_____	34A
<i>(transferred from 4P on CY)</i>		
Interest expenditure	_____	34B
Non-interest expenditure	_____	34C

**Deferred shares****Deferred shares**

Members' share balances	_____	35A
<i>(transferred from 2T on CY)</i>		
Non-deferred shares	_____	35B
Deferred shares	_____	35C

**Reserves – total**

General reserve – Closing balance	_____	36A
<i>(transferred from 10G on CY)</i>		
Other reserve – Closing balance	_____	36B
<i>(transferred from 11G on CY)</i>		
Revaluation reserve – non-capital element	_____	36C
Deferred share reserve	_____	36D
Reserves	_____	36E

**Reserves – percentage**

Total assets	_____	36F
<i>(transferred from 1P on CY)</i>		
Reserves as % of total assets	_____	36G

**Corporate membership**

**Corporate members**

Total members		<u>36A</u>
		<u>37A</u>
<i>(transferred from 12D on CY)</i>		
Individuals		<u>36B</u>
		<u>37B</u>
Bodies corporate		<u>36C</u>
		<u>37C</u>
Partnerships		<u>36D</u>
		<u>37D</u>
Unincorporated associations		<u>36E</u>
		<u>37E</u>

**Corporate non-deferred shares**

	£	
Non-deferred shares		<u>37A</u>
		<u>38A</u>
<i>(transferred from 35B above)</i>		
Individual non-deferred shares		<u>37B</u>
		<u>38B</u>
Body corporate non-deferred shares		<u>37C</u>
		<u>38C</u>
Partnership non-deferred shares		<u>37D</u>
		<u>38D</u>
Unincorporated association non-deferred shares		<u>37E</u>
		<u>38E</u>

**Corporate deferred shares**

Deferred shares		<u>38A</u>
		<u>39A</u>
<i>(transferred from 35C above)</i>		
Individual deferred shares		<u>38B</u>
		<u>39B</u>
Body corporate deferred shares		<u>38C</u>
		<u>39C</u>
Partnership deferred shares		<u>38D</u>
		<u>39D</u>
Unincorporated deferred shares		<u>38E</u>
		<u>39E</u>

**Corporate loans**

Due from members for loans - Secured		<u>39A</u>
		<u>40A</u>
<i>(transferred from 1E on CY)</i>		
Due from members for loans - Unsecured		<u>39B</u>
		<u>40B</u>
<i>(transferred from 1F on CY)</i>		
Total loans outstanding		<u>39C</u>
		<u>40C</u>
Individual loans		<u>39D</u>
		<u>40D</u>
Body corporate loans		<u>39E</u>
		<u>40E</u>



Partnership loans	_____	<u>39F</u>
		<u>40F</u>
Unincorporated association loans	_____	<u>39G</u>
		<u>40G</u>

## Non-qualifying membership

### Non-qualifying member percentage

Limit on the number of non-qualifying members (where stated in the rules of the <i>credit union</i> )	_____	<u>40A</u>
		<u>41A</u>

## Reserves and capital – adjusted for deferred share reserves and revaluation reserves

### Re-valued fixed and total assets

<u>Fixed assets</u>	_____	<u>41A</u>
<i>(transferred from 1A on CY)</i>		
<u>Revaluation amount</u>	_____	<u>41B</u>
<u>Re-valued fixed assets</u>	_____	<u>41C</u>
<u>Total assets</u>	_____	<u>41D</u>
<i>(transferred from 1P on CY)</i>		
<u>Re-valued total assets</u>	_____	<u>41E</u>

### Adjusted reserves - total

<u>General reserves</u>	_____	<u>42A</u>
<i>(transferred from 2N on CY)</i>		
<u>Other reserves</u>	_____	<u>42B</u>
<i>(transferred from 2P on CY)</i>		
<u>Revaluation reserves</u>	_____	<u>42C</u>
<u>Deferred share reserves</u>	_____	<u>42D</u>
<u>Adjusted reserves</u>	_____	<u>42E</u>

### Adjusted reserves - percentage

<u>Adjusted reserves as % of re-valued total assets</u>	_____	<u>43A</u>
---------------------------------------------------------	-------	------------

### Revaluation reserves – CREDS capital element

<u>Total capital</u>	_____	<u>44A</u>
<i>(transferred from 2S on CY)</i>		
<u>Deferred share reserves</u>	_____	<u>44B</u>
<u>Total capital and deferred share reserves</u>	_____	<u>44C</u>
<u>1/3 of (Total capital and deferred share reserves)</u>	_____	<u>44D</u>
<u>Revaluation reserves</u>	_____	<u>44E</u>
<u>Revaluation reserves – CREDS capital element</u>	_____	<u>44F</u>

### Adjusted capital - total

<u>Total capital and deferred share reserves</u>	_____	<u>45A</u>
<i>(transferred from 44C above)</i>		
<u>Revaluation reserve – CREDS capital element</u>	_____	<u>45B</u>
<i>(transferred from 44F above)</i>		

Adjusted capital \_\_\_\_\_ 45C

**Adjusted capital - percentage**

Adjusted capital as % of re-valued total assets \_\_\_\_\_ 46B

**NOTE:** *A credit union* should use the figures for re-valued total assets and adjusted capital when reporting large exposures and risk-adjusted capital-to-assets in the main body of the CY. Further guidance is provided in the Notes on completing the CY.

## 16 Annex 15(1)G Notes on completing the Quarterly Return (CQ) for credit unions

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### General information

The Quarterly Return (CQ) is to be completed by all *credit unions* in Great Britain as at end March, end June, end September and end December. This form should be completed using the accruals-based accounting method.

Please read *CREDS* in conjunction with these reporting instructions.

Send the fully completed Quarterly Return (CQ) to **The Financial Services Authority** in accordance with *SUP* 16.3.6R – *SUP* 16.3.13R **within one calendar month** after the quarter to which it relates. Failure to do so is a breach of your regulatory requirements, as laid down in *CREDS*, and may result in your *credit union* being subject to *FSA* sanctions.

Page numbers that appear in the text of these Notes refer to the pages of the Quarterly Return (CQ), not to the pages of these Notes (CQN).

Words in italics denote defined terms which can be found in the Glossary to the main *FSA* Handbook.

"*CREDS*" means the Credit Unions New sourcebook.

"*SUP*" means The Supervision Manual (part of the main *FSA* Handbook)

"*APER*" means the Approved Person Manual (part of the main *FSA* Handbook)

"CUA 1979" means the Credit Unions Act 1979.

If there is no figure to be entered in the box please insert "nil" or "N/A" as appropriate.

Care should be taken to avoid errors. The *approved person* who signs the Front Page of the Quarterly Return (CQ) should initial any alterations to entries. Correction fluid should **not** be used in correcting entries.

All information should be legible, in particular especially the name of the persons signing the Quarterly Return (CQ).

~~If you have any questions, please contact one of the following numbers:~~

~~020 7676 0104~~

~~020 7676 1096~~

~~020 7676 0282~~

~~020 7676 0352~~

If you have any questions, please contact The Customer Contact Centre

UK: 0845 606 9966 (call rates may vary)

International: +44 20 7066 1000

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[*Editor's Note:* The following amendments are made against the text of the Credit Unions (Northern Ireland) Instrument 2012 published as 'Near-final' rules in the *FSA* Policy Statement 11/18 ("FSA regulation of credit unions in Northern Ireland").]

## Membership and complaints contact

## page 2 of CQ

### Membership

Indicate in the appropriate boxes the number of members that the *credit union* currently has in each category of membership.

**“Member”** refers to a member (qualifying or non-qualifying) (and over the age at which he may lawfully become a member of the *credit union*, for *Great Britain credit unions* under the *credit union’s* rules or, for *Northern Ireland credit unions*, under the CUO or the *credit union’s* rules) who, in respect of a *Great Britain credit union*, can save up to £150,000 or 1.5 per cent of the total non-deferred shares in the *Great Britain credit union*, whichever is the greater, or who, in respect of a *Northern Ireland credit union*, can save up to £15,000 or 1.5 per cent of the total non-deferred shares in the *Northern Ireland credit union*, whichever is the greater. [A qualifying member is a person who fulfils the membership requirements: a non-qualifying member is a person who no longer fulfils the membership requirements having once done so.]

**“Juvenile depositor”** refers to a depositor who is a person too young to be a member of the *credit union* (for a *Great Britain credit union* under the *credit union’s* rules and for a *Northern Ireland credit union* under the CUO or the *credit union’s* rules), who can save up to a maximum of £10,000, or 1.5% of the total non-deferred shares in the *credit union* but cannot take out a loan from the *credit union*.

....

[*Editor’s Note:* The following amendments are made against the text of the Credit Unions New sourcebook (CREDS).]

## Share capital

## page 3 of CQ

1A Total shares

The total amount of money held by your credit union, at the quarter end, relating to shares paid in by members, including money held for *deferred shares* by *Great Britain credit unions*.

This figure should take account of all changes made during the quarter.

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...

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4A	Total assets	<p>The total assets of your <i>credit union</i> that appear on the Balance Sheet of the relevant monthly financial statement. It may include the following:</p> <ul style="list-style-type: none"> <li>• Investments</li> <li>• Investments of juvenile <i>deposits</i></li> <li>• Total loans to members</li> <li>• Cash and <i>bank</i> balances</li> </ul>
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This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

**Please note: Unused overdrafts should not be included when calculating the total assets of your *credit union*.**

If a *credit union* has revalued its property fixed assets upwards, the revalued amount of total assets should not be included here. Instead, include here the value of total assets excluding any upward property revaluation. The revalued amount of total assets, including any upward property revaluation, should be calculated in section 16 of the supplementary analysis of the quarterly return (CQ) for *credit unions*.

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4B	Total liabilities (including reserves)	<p>The total liabilities of your <i>credit union</i>, that appear on the Balance Sheet of the relevant Monthly Financial Statement of your <i>credit union</i>. It may include the following:</p> <ul style="list-style-type: none"> <li>• Total shares of members, <u>including deferred shares</u></li> <li>• Reserves, <u>but not including revaluation reserves or deferred share reserves</u></li> <li>• Juvenile savings</li> <li>• Total borrowings at <b>2E</b> above</li> </ul>
----	----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

This is not an exclusive list. Your *credit union* will need to refer to its relevant Balance Sheet.

Under section 7(6) of the Credit Unions Act 1979, a *Great Britain credit union* shall transfer a sum equal to the amount paid on fully subscribed deferred shares to its reserves. However, in the main body of the CQ, *Great Britain credit unions* should report the amount held for deferred shares here (as part of total shareholding and, therefore, as part of total liabilities), and should not report deferred share reserves as part of Audited reserves – other at **5B**. In the supplementary analysis of the CQ, *Great Britain credit unions* should report deferred share reserves at **17D** and **19B**.

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Where a credit union has revaluation reserves, due to the upwards revaluation of property fixed assets, the amount should not be included here but reported separately in the supplementary analysis of the CQ at 17C and 19E.

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## Credit union capital

page 3 of CQ

5B Audited reserves - other Money that your *credit union* has set aside out of net profits (in accordance with CREDS 5.3.2R) - for example, a "revenue reserve" for unforeseen circumstances.

This will include initial capital which has not yet been spent.

**Please note:**

~~Where a revaluation reserve is included within other reserves, this should only include revaluation reserves counting towards capital under CREDS 5.2.1R(6) to CREDS 5.2.1R(8).~~

Under section 7(6) of the Credit Unions Act 1979, a Great Britain credit union shall transfer a sum equal to the amount paid on fully subscribed deferred shares to its reserves. However, if if money is held in a deferred share reserve shares, it should not be included here within other reserves in the main body of the CQ, but reported separately as part of the calculation of adjusted reserves and adjusted capital in the supplementary analysis to of the quarterly return CQ at 17D and 19B. Similarly, where a credit union has revaluation reserves, due to the upwards revaluation of fixed assets, it should not be included here but reported separately in the supplementary analysis of the CQ at 17C and 19E.

Please refer to Chapter 5 of CREDS. ~~This~~ The figure for Audited reserves – other will be negative if your *credit union* has an accumulated deficit from previous years. "Audited reserves – other" should not be confused with a bad debt "reserve" or provision for bad debts. Please insert "nil" if no other audited reserves are held by your *credit union* other than a general reserve.

...

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Information for  
version 1 credit unions

...

**Total capital**

This is the same figure that appears at 5E on the Quarterly Return (CQ) or, where your credit union has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.

...

**Capital ratio** (for information purposes only)

To determine the capital ratio your *credit union* will use the following formula:

$$\frac{\text{Total capital (5E or 20C)}}{\text{Total assets (4A or 16C)}} \times 100$$

....

**Large exposures**

...

8A Largest net exposure A credit union should report here its largest large net exposure. To work out your credit union's largest large net exposure you will need to determine:

a) the net *exposure* on each loan and find the largest figure. The formula for this is:

$$\text{(loan balance + interest owing) - attached share balance}$$

b) what is the total capital of your *credit union*? This is defined at 5E of CQ or, where your credit union has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.

...

8B As % of capital An individual large exposure should not exceed 25% of your *credit union's* capital (CREDS 7.4.2R).

To determine this percentage, your *credit union* will need to use the following calculation:

$$\frac{\text{Largest large net exposure (8A)}}{\text{Total capital (5E or 20C)}} \times 100$$

...

8D As % of capital CREDS states that the aggregate total of large net *exposures* should not exceed 500% of the total capital of the *credit union*,

and should not exceed 300% of total capital without prior notifying the FSA. To see if the example satisfies the rules please use the following calculation:

Aggregate total of large net ~~exposure~~ exposures (8C)

X

100

Total capital (5E or 20C)

....

**Large version 1 and  
version 2 credit  
unions**

**page 4 of CQ**

...

9A Total capital

This figure is the same as the figure that appears at **5E** of CQ or, where your credit union has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 20C on the supplementary analysis of the CQ.

...

**F**

Net provisions

Total assets (as at **4A** of CQ or **16C** of the supplementary analysis of the CQ)

**G**

1% of total assets

The figure that needs to be posted to the Quarterly Return (CQ) is the lesser of **F** and **G**. If this is a negative figure, the figure that appears on the Quarterly Return (CQ) needs to be a negative figure.

A worked example is given on the next page

...



...

**E**

Net provisions

3,200

Total assets (as at **4A** of CQ or **16C** of the supplementary analysis of the CQ)

1,120,000

...

9D	Total assets	This is the total assets of your <i>credit union</i> that appears on the Balance Sheet. It will be the same figure that appears in <b>4A</b> above of the CQ or, where a <i>credit union</i> has revaluation reserves, at <b>16C</b> of the supplementary analysis of the CQ. Please note that unused overdrafts or unused committed facilities cannot be used when calculating the total assets of your <i>credit union</i> .
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[*Editor's Note:* The following amendments are made against the text of the Credit Unions (Northern Ireland) Instrument 2012 published as 'Near-final' rules in the FSA Policy Statement 11/18 ("FSA regulation of credit unions in Northern Ireland").]

## NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

A credit union should complete the relevant sections of the supplementary analysis of the quarterly return (CQ) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act; or
- the credit union has revaluation reserves from the upward valuation of property fixed assets.

The sections of the supplementary analysis of the CQ should be completed as follows:

- Sections 10 – 15 The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by a Great Britain credit unions in Great Britain where they meet one or more of the following conditions at the end of the quarter: that
- the credit union has issued interest-bearing shares, under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act; or
- the credit union has admitted corporate members under section 5A of the Act.
- These sections are The Supplementary Analysis of the Quarterly Return is intended to break down some of the information contained in the CQ Quarterly Return in order to give a clearer picture of the financial position of Great Britain credit unions that undertake the these activities listed above.

- The Credit Unions (Northern Ireland) Order 1985 does not provide for *Northern Ireland credit unions* to undertake the activities listed above. Therefore, *Northern Ireland credit unions* do not need to complete the ~~Supplementary Analysis of the Quarterly Return~~ sections 10 – 15.
- Sections 16 – 21 should be completed by a *Great Britain credit union* that has issued *deferred shares* or has revaluation reserves. Sections 16 and 19 – 21 should be completed by a *Northern Ireland credit union* that has revaluation reserves.
- Sections 16 – 21 are intended to recalculate or adjust the value of reserves and capital by including the appropriate amount of deferred share reserves and revaluation reserves. Adjusted reserves amounts at 17E and 18A are used to determine whether a *Great Britain credit union* meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act. Adjusted capital amounts at 20C and 21A are used to determine whether a *credit union* meets the capital requirements in *CREDS*.

[*Editor's Note:* The following amendments are made against the text of the Credit Unions New sourcebook (CREDS).]

## Deferred shares

### Deferred shares

11A	Total shares	The total amount of money held by the <i>credit union</i> relating to shares paid in by members.  The amount entered here should be transferred from <b>1A</b> on CQ for analysis. In the following sections, this amount should be broken down into non-deferred shares and <i>deferred shares</i> so that: <b>11A = 11B + 11C</b>
11B	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of non-deferred shares.
11C	Deferred shares	The total amount of money held by the <i>credit union</i> in respect to <i>deferred shares</i> .

### Reserves – total

12A	Audited reserves— General	The total amount held by the <i>credit union</i> in general reserve. The amount entered here should be transferred from <b>5A</b> on CQ.
12B	Audited reserves—Other	The total amount held by the <i>credit union</i> in other reserves. The amount entered here should be transferred from <b>5B</b> on

		CQ.
12C	Revaluation reserves—non-capital element	The amount of revaluation reserve that is not included in <b>5B</b> of CQ and <b>12B</b> (because it does not count towards a <i>credit union's</i> capital under CREDS 5.2.1R). See the note to <b>5B</b> on CQ.
12D	Deferred share reserves	The total amount held by the <i>credit union</i> in the deferred share reserve. Where subscribed for in full, <i>credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.
12E	Reserves	The total amount of money held by the <i>credit union</i> in reserves (including deferred share reserves) at the end of the financial year, so that:  <b>12E = 12A + 12B + 12C + 12D</b>

### Reserves – percentage

12F	Total assets	The amount entered here should be transferred from <b>4A</b> on CQ.
12G	Reserves as % of total assets	To determine this ratio your <i>credit union</i> will use the following formula:  Reserves ( <b>12E</b> )  X  100  Total assets ( <b>12F</b> )  1

### Corporate membership

#### Corporate members

<u>12A</u> 13A	Number of members at the end of the quarter	Total number of members of the <i>credit union</i> .  The amount entered here should be transferred from <b>1a</b> on CQ for analysis. In the following sections, this amount should be broken down into different categories of member
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		so that: <b><u>12A 43A = 12B 43B + 12C 43C + 12D 43D + 12E 43E</u></b>
<u>12B</u> 43B	Individuals	The number of members of the <i>credit union</i> that are individuals.
<u>12C</u> 43C	Bodies corporate	The number of members of the <i>credit union</i> that are <i>bodies corporate</i> .
<u>12D</u> 43D	Partnerships	The number of members of the <i>credit union</i> that are partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>12E</u> 43E	Unincorporated associations	The number of members of the <i>credit union</i> that are unincorporated associations.  Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

#### Corporate non-deferred shares

<u>13A</u> 44A	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of shares that are not <i>deferred shares</i> . The amount entered here should be equal to the amount at <b>11B</b> above.  In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that:  <b><u>13A 44A = 13B 44B + 13C 44C + 13D 44D + 13E 44E</u></b>
<u>13B</u> 44B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
<u>13C</u> 44C	Body corporate non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by bodies corporate.
<u>13D</u> 44D	Partnership non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by partnerships.

		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>13E</u> 14E	Unincorporated association non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by unincorporated associations.  Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

### Corporate deferred shares

<u>14A</u> 15A	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> . This should be equal to the amount at <b>11C</b> .  In the following sections, this amount should be broken down into <i>deferred shares</i> held by different categories of member so that:  <b><u>1415A</u> = <u>1415B</u> + <u>1415C</u> + <u>1415D</u> + <u>1415E</u></b>
<u>14B</u> 15B	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
<u>14C</u> 15C	Body corporate deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by <i>bodies corporate</i> .
<u>14D</u> 15D	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>14E</u> 15E	Unincorporated association deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by unincorporated associations.  Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

### Corporate loans

<u>15A</u> 46A	Total loans to members	<p>The total amount outstanding to the <i>credit union</i> on loans to members. The amount entered here should be transferred from <b>1B</b> on CQ for analysis.</p> <p>In the following sections, this amount should be broken down into loans to different categories of member so that:</p> <p><b><u>15A 46A = 15B 46B + 15C 46C + 15D 46D + 15E 46E</u></b></p>
<u>15B</u> 46B	Individual loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to individuals.
<u>15C</u> 46C	Body corporate loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to <i>bodies corporate</i> .
<u>15D</u> 46D	Partnership loans	<p>The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to partnerships.</p> <p>Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.</p>
<u>15E</u> 46E	Unincorporated association loans	<p>The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to unincorporated associations.</p> <p>Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.</p>

### Reserves and capital – adjusted for deferred share reserves and revaluation reserves

#### Re-valued total assets

<u>16A</u>	<u>Total assets</u>	<u>The value of total assets of the <i>credit union</i>, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from <b>4A</b> on CQ.</u>
<u>16B</u>	<u>Revaluation amount</u>	<u>The amount by which the property fixed assets the <i>credit union</i> owns have been re-valued upwards, being the difference between current market values and the book</u>

		<u>values of the property fixed assets.</u>
<u>16C</u>	<u>Re-valued total assets</u>	<u>The current market value of total assets of the <i>credit union</i>, including any amount for the upward revaluation of property fixed assets, so that:</u>  <b><u>16C = 16A + 16B</u></b>  <u>This amount will be used to determine which <i>CREDS</i> requirements apply to a <i>credit union</i>.</u>
<b><u>Adjusted reserves – total</u></b>		
<u>17A</u>	<u>Audited reserves – General</u>	<u>The total amount held by the <i>Great Britain credit union</i> in general reserves. The amount entered here should be transferred from <b>5A</b> on CQ.</u>
<u>17B</u>	<u>Audited reserves – Other</u>	<u>The total amount of money held by the <i>Great Britain credit union</i> in other reserves. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from <b>5B</b> on CQ.</u>
<u>17C</u>	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the <i>Great Britain credit union</i>, arising from the differences between current market values and the book values of the property fixed assets.</u>
<u>17D</u>	<u>Deferred share reserves</u>	<u>The total amount held by the <i>Great Britain credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.</u>
<u>17E</u>	<u>Adjusted reserves</u>	<u>The total amount of money held by the <i>Great Britain credit union</i> in reserves (including revaluation reserves and <i>deferred share</i> reserves), so that:</u>  <b><u>17E = 17A + 17B + 17C + 17D</u></b>  <u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u>

**Adjusted reserves - percentage**

18A	<u>Adjusted reserves as % of re-valued total assets</u>	<p>To determine this ratio the <i>Great Britain credit union</i> should use the following formula:</p> $\frac{\text{Adjusted reserves (17E)}}{100} \div \text{Re-valued total assets (16C)}$ <p>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</p>
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#### Revaluation reserves – CREDS capital element

19A	<u>Total capital</u>	<p>The total amount held by the <i>credit union</i> as capital in the form of general reserves, other reserves, interim profit or loss, and subordinated debt. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from <b>5E</b> on CQ.</p>
19B	<u>Deferred share reserves</u>	<p>The total amount held by the <i>credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves. For <i>Northern Ireland credit unions</i>, the amount entered here will be nil.</p>
19C	<u>Total capital and deferred share reserves</u>	<p>The total amount held by the <i>credit union</i> in total capital and deferred share reserves so that:</p> <p><b>19C = 19A + 19B</b></p>



19D	<u>1/3 of (Total capital and deferred share reserves)</u>	To determine this amount the <i>credit union</i> should use the following formula:
		1
		<u>X</u>
		<u>Total capital and deferred share reserves (19C)</u>
		/
		<u>3</u>
19E	<u>Revaluation reserves</u>	The amount of revaluation reserves held by the <i>credit union</i> that meets the requirements in <i>CREDS 5.2.1R(6)</i> to <i>CREDS 5.2.1R(7)</i> , arising from the differences between current market values and the book values of the property fixed assets.
19F	<u>Revaluation reserves – CREDS capital element</u>	<p>The amount of revaluation reserves meets the limits in <i>CREDS 5.2.1R(6)</i> to (8) and so can be included in capital.</p> <p><i>CREDS 5.2.1R(8)</i> states that the amount of revaluation reserves included in the calculation of capital must not be more than 25% of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt, initial capital and revaluation reserves.</p> <p>The simplest way of reporting this amount accurately is to calculate an equivalent amount. An equivalent amount is a third of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt and initial capital, but excluding revaluation reserves. This is equivalent to a third of the sum of total capital and <i>deferred shares</i>, which is the amount at <b>19E</b>.</p> <p>So the amount that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements will be equal to either <b>19D</b> or <b>19E</b> above, whichever is the lower.</p>
<b>Adjusted capital – total</b>		
20A	<u>Total capital and deferred share reserves</u>	The total amount held by the <i>credit union</i> in total capital and deferred share reserves. This amount should be equal to <b>19C</b> above.
20B	<u>Revaluation reserves – CREDS capital element</u>	The amount of revaluation reserves that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements. This amount should be equal to <b>19F</b> above.

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<u>20C</u>	<u>Adjusted capital</u>	<p>The sum of total capital, deferred share reserves and the <u>CREDS capital element of revaluation reserves so that:</u></p> <p><b><u>20C = 20A + 20B</u></b></p> <p>This amount will be used to determine whether a <i>credit union</i> meets the <u>CREDS capital requirements.</u></p>
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### **Adjusted capital – percentage**

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<u>21A</u>	<u>Adjusted capital as % of re-valued total assets</u>	<p>To determine this ratio the <i>credit union</i> should use the following formula:</p> <p><u>Adjusted capital (20C)</u></p> <p style="text-align: center;"><u>X</u></p> <p style="text-align: center;"><u>100</u></p> <p style="text-align: center;"><u>/</u></p> <p><u>Re-valued total assets (16C)</u></p> <p>This amount will be used to determine whether a <i>credit union</i> meets the <u>CREDS capital requirements.</u></p>
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## 16 Annex 15(2)G Notes on completing the Annual Return (CY) for credit unions

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**Balance sheet**

The balance sheet sets out the *credit union's* total assets, reserves and liabilities at the end of the financial year.

**ASSETS**1A **Fixed assets**

The figure entered here should include the value of any property the *credit union* owns (e.g. the *credit union's* registered office, computer or office equipment). Depreciation of the fixed assets should be deducted before the figure is entered into the box. If a *credit union* has re-valued its property fixed assets upwards, the re-valued amount of fixed assets should not be included here. Instead, include here the value of fixed assets excluding any upward property revaluation. The re-valued amount of fixed assets should be included in the supplementary analysis of the annual return (CY) for *credit unions* at **41C**.

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**Credit union capital and reserves**

...

2P **Other reserves**

Money that the *credit union* has set aside out of profits e.g. a revenue reserve to provide for unforeseen circumstances. Other reserves are entirely voluntary and do not have to be held by the *credit union*.

**Please note:**

~~Where a revaluation reserve is included within the other reserves, this should only include revaluation reserves counting towards capital under CREDS 5.2.1R(6) to CREDS 5.2.1R(8).~~

If Under section 7(6) of the Credit Unions Act 1979, a *Great Britain credit union* shall transfer a sum equal to the amount paid on fully subscribed deferred shares to its reserves. However, if money is held for in a deferred share reserve shares, it should not be included here within other reserves in the main body of the CY, but reported separately in the supplementary analysis of the annual return CY at **42D** and **44B**. Similarly, where a *credit union* has revaluation reserves, due to the upwards revaluation of fixed assets, it should not be included here within other reserves but reported separately in the supplementary analysis of the CY at **42C** and **44E**.

...

2T **Members' share balances**

Total amount of money held by the *credit union* in respect of shares paid in by members, including money paid in for *deferred shares*.

...

## Adult liquidity Liquidity ratio

...

	<b>Large exposures</b>	Whilst these figures relate to the financial year end, your <i>credit union</i> will need to look at large <i>exposure</i> requirements when issuing loans. For example, a large <i>exposure</i> is defined as any individual net liability which is at least £7,500 and at least 10% of the value of the <i>credit union's</i> capital.
31A	Largest net exposure	<p><u>A credit union should report its largest large net exposure.</u> To work out your <i>credit union's</i> largest <u>large</u> net <i>exposure</i> you will need to determine:</p> <ol style="list-style-type: none"> <li>1. the net <i>exposure</i> on each loan and find the largest figure. The formula for this is:   <b>(loan balance + interest owing) – attached share balance</b></li> <li>2. what is the total capital of your <i>credit union</i>? This is defined at <b>2S of CY</b> or, <u>where your <i>credit union</i> has revaluation reserves or deferred share reserves, it is defined as adjusted capital at 45C on the supplementary analysis of the CY.</u></li> </ol> <p>Say, for example your <i>credit union's</i> total capital is £40,000. We know from the above that only net liabilities over 10% of Capital are subject to the large <i>exposures</i> rule. Ten percent of £40,000 is £4,000.</p> <p>However, we further know from the above that only net liabilities over £7,500 are subject to the large <i>exposures</i> rule. Below we see all net <i>exposures</i> over 10% of total capital and those that do and do not qualify:</p> <p>...</p>
31B	As % of capital	<p>An individual large exposure should not exceed <b>25%</b> of your <i>credit union's</i> capital (<i>CREDS</i> 7.4.2R).</p> <p>To determine this percentage, your <i>credit union</i> will need to use the following calculation:</p> $\begin{array}{r} \text{Largest net exposure (31A)} \\ \times \\ 100 \\ \hline \text{Total capital (2S or 45C)} \\ \hline 1 \end{array}$ <p>...</p>

...

31D As % of capital *CREDS* states that the aggregate total of large net exposures must not exceed 500% of the total capital of the *credit union*, and must not exceed 300% of total capital without prior notifying the FSA. To see if the example satisfies the rules please use the following calculation:

Aggregate total of large net exposure (**31C**)

X

100

Total capital (**2S** or **45C**)

1

So:

£35,285

X

100

=

88.21%

£40,000

1

Please note that risk adjusted capital should not be used for the purposes of calculating your large *exposures*. For all *credit unions* the total capital figure used here should be the same as box **2S** ~~on the balance sheet of CY or, where your *credit union* has revaluation reserves or deferred share reserves, it is defined as adjusted capital at **45C** on the supplementary analysis of the CY.~~

## Large version 1 and version 2 credit unions

### Risk adjusted capital ratio

A risk adjusted capital ratio is a requirement for larger *version 1* and *version 2 credit unions* under *CREDS*.

*CREDS* 5.3.15R states "A *version 1 credit union* with total assets of more than £10 million and/or a total number of members of more than 10,000 must maintain at all times a risk-adjusted capital to total assets ratio of at least 8%".

32A Total capital

The figure for capital will be the figure that appears on the balance sheet at **2S** of CY or, where a *credit union* has revaluation reserves or deferred share reserves, it is defined as

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adjusted capital at 45C on the supplementary analysis of the CY.

...

**E**

Net provisions

Total assets (as at **1P** of CY or **41E** of the supplementary analysis of the CY)

**G**

1% of total assets

The figure that needs to be posted onto the Annual Return (CY) is the lesser of **E** and **G**. If this is a negative figure, the figure that appears on the Annual Return (CY) need to be a negative figure.

A worked example is given on the next page.

...

...

**E**

Net provisions

3,200

Total assets (as at **1P** of CY or **41E** of the supplementary analysis of the CY)

1,120,000

...

...

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32D	Total assets	This is the same as box <del>4M</del> on the Balance Sheet <b>1P</b> of CY or <b>41E</b> of the supplementary analysis of the CY.
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[*Editor's Note:* The following amendments are made against the text of the Credit Unions (Northern Ireland) Instrument 2012 published as 'Near-final' rules in the FSA Policy Statement 11/18 ("FSA regulation of credit unions in Northern Ireland").]

## NOTES ON COMPLETING SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

### General Information

A credit union should complete the relevant sections of the supplementary analysis of the annual return (CY) for credit unions if any of the following conditions apply:

- the Great Britain credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the Great Britain credit union has issued deferred shares in accordance with section 31A of the Act;
- the Great Britain credit union has admitted corporate members under section 5A of the Act;
- the rules of the Great Britain credit union limit the number of non-qualifying members, in accordance with section 5(5) of the Act; or
- the credit union has revaluation reserves form the upward valuation of property fixed assets.

The sections of the supplementary analysis of the CY should be completed as follows:

- ~~Sections 33 – 40 The Supplementary Analysis of the Annual Return should be completed as part of the Annual Return (CY) for credit unions by a Great Britain credit unions union in Great Britain where they meet one or more of the following conditions at the end of the financial year: that has~~
  - ~~the credit union has issued interest-bearing shares, under section 7A of the Credit Unions Act 1979 (the Act);~~
  - ~~the credit union has issued deferred shares, in accordance with section 31A of the Act;~~
  - ~~the credit union has admitted corporate members under section 5A of the Act; or~~
  - ~~the rules of the credit union limit limited the number of non-qualifying members of the credit union in its rules, in accordance with section 5(5) of the Act.~~
- These sections The Supplementary Analysis of the Annual Return are intended to break down some of the information contained in the Annual Return CY in order to give a clearer picture of the financial position of Great Britain credit unions that undertake ~~the these~~ activities listed above.
- Where a credit union issues interest bearing shares, its auditor should submit a report to the FSA stating whether, in their opinion, the credit union has satisfied the conditions specified by the FSA for the purpose of section 7A of the Credit Unions Act 1979.
- The Credit Unions (Northern Ireland Order) 1985 does not provide for Northern Ireland credit unions to undertake ~~the these~~ activities listed above. Therefore, so they Northern Ireland credit unions do not need to complete the Supplementary Analysis of the Quarterly Return sections 33 – 40.
- Sections 41 – 46 should be completed by a Great Britain credit union that has issued deferred shares or that has revaluation reserves. Sections 41 and 44 – 46 should be completed by a Northern Ireland credit union that has revaluation reserves.
  - Sections 41 – 46 are intended to recalculate or adjust the value of reserves and

capital by including the appropriate amount of deferred share reserves and revaluation reserves. Adjusted reserves amounts at 42E and 43A are used to determine whether a *Great Britain credit union* meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act. Adjusted capital amounts at 45C and 46A are used to determine whether a *credit union* meets the capital requirements in *CREDS*.

[*Editor's Note:* The following amendments are made against the text of the Credit Unions New sourcebook (CREDS).]

## Deferred shares

### Deferred shares

35A	Members' share balances	The total amount of money held by the <i>credit union</i> in respect of member shares.
		The amount entered here should be transferred from <b>2T</b> on CY for analysis. In the following sections, this amount should be broken down into non-deferred shares and <i>deferred shares</i> so that: <b>35A = 35B + 35C</b>
35B	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of non-deferred shares.
35C	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> .

### Reserves

36A	General reserve— Closing balance	The total amount held by the <i>credit union</i> in general reserve at the end of the financial year. The amount entered here should be transferred from <b>10G</b> on CY.
36B	Other reserve—Closing balance	The total amount held by the <i>credit union</i> in other reserves at the end of the financial year. The amount entered here should be transferred from <b>11G</b> on CY.
36C	Revaluation reserves— non-capital element	The amount of revaluation reserve that is not included in <b>11G</b> on CY and <b>36B</b> (because it does not count towards a <i>credit union's</i> capital under <i>CREDS</i> 5.2.1R). See the note to <b>2P</b> on CY.
36D	Deferred share reserves	The total amount held by the <i>credit union</i> in the deferred share reserve. Where subscribed for in full, <i>credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.
36E	Reserves	The total amount of money held by the <i>credit union</i> in reserves (including <i>deferred share</i> reserves) at the end of the financial year, so that:



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$$36E = 36A + 36B + 36C + 36D$$


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### Reserves – percentage

36F	Total assets	The amount entered here should be transferred from <b>1P</b> on CQY
36G	Reserves as % of total assets	To determine this ratio your <i>credit union</i> will use the following formula:  Reserves ( <b>36E</b> )  $\times$  100  Total assets ( <b>36F</b> )  4

### Corporate membership

#### Corporate members

36A	Total members	Total number of members of the <i>credit union</i> at the end of the financial year.
37A		The amount entered here should be transferred from <b>12D</b> on CY for analysis. In the following sections, this amount should be broken down into different categories of member so that:  <b>37 36A = 37 36B + 37 36C + 37 36D + 37 36E</b>
36B	Individual members	The number of members of the <i>credit union</i> at the end of the financial year that are individuals.
37B		
36C	Body corporate members	The number of members of the <i>credit union</i> at the end of the financial year that are <i>bodies corporate</i> .
37C		
36D	Partnership members	The number of members of the <i>credit union</i> at the end of the financial year that are partnerships.
37D		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
36E	Unincorporated association members	The number of members of the <i>credit union</i> at the end of the financial year that are unincorporated associations.
37E		Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an

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unincorporated association.

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### Corporate non-deferred shares

<u>37A</u> 38A	Non-deferred shares	The total amount of money held by the <i>credit union</i> in respect of shares that are not <i>deferred shares</i> . The amount entered here should be equal to the amount at <b>35B</b> above.  In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that:  <b><math>38\ 37A = 38\ 37B + 38\ 37C + 38\ 37D + 38\ 37E</math></b>
<u>37B</u> 38B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
<u>37C</u> 38C	Body corporate non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by <i>bodies corporate</i> .
<u>37D</u> 38D	Partnership non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
<u>37E</u> 38E	Unincorporated association non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by unincorporated associations.  Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

### Corporate deferred shares

<u>38A</u> 39A	Deferred shares	The total amount of money held by the <i>credit union</i> in respect of <i>deferred shares</i> . This should be equal to the amount at <b>35C</b> .  In the following sections, this amount should be broken down into <i>deferred shares</i> held by different categories of member so that:  <b><math>39\ 38A = 39\ 38B + 39\ 38C + 39\ 38D + 39\ 38E</math></b>
<u>38B</u> 39B	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
<u>38C</u>	Body corporate deferred	The total amount held by the <i>credit union</i> in respect of

39C	shares	<i>deferred shares held by bodies corporate.</i>
38D 39D	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
38E 39E	Unincorporated association deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by unincorporated associations.  Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

### Corporate loans

39A 40A	Due from members for loans – Secured	The total amount outstanding to the <i>credit union</i> on secured loans to members e.g. loans secured on shares or property.  The amount entered here should be transferred from <b>1E</b> on CY for analysis.
39B 40B	Due from members for loans – Unsecured	The total amount outstanding to the <i>credit union</i> on unsecured loans to members. This figure will exclude any loans written off during the financial year.  The amount entered here should be transferred from <b>1F</b> on CY for analysis.
39C 40C	Total loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on all loans to members, whether secured or unsecured, so that:  <b>40 39C = 40 39A + 40 39B</b>  In the following sections, this amount should be broken down into loans to different categories of member so that:  <b>40 39C = 40 39D + 40 39E + 40 39F + 40 39G</b>
39D 40D	Individual loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to individuals.
39E 40E	Body corporate loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to <i>bodies corporate</i> .
39F 40F	Partnership loans	The total amount outstanding to the <i>credit union</i> <del>at the end of the financial year</del> on loans to partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.

39G	Unincorporated association loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to unincorporated associations.
40G		Unincorporated associations are represented by individuals who are members of a <i>credit union</i> in their capacity as officers or members of the governing body of an unincorporated association.

### Non-qualifying membership

40A	Limit on non-qualifying members	If the rules of the <i>credit union</i> provide a limit on the number of non-qualifying members of a <i>credit union</i> , that amount should be entered here.
41A		Non-qualifying members are members who no longer fulfil the membership qualifications, having once done so e.g. he or she no longer lives in the common bond area.

### Reserves and capital – adjusted for deferred share reserves and revaluation reserves

#### Re-valued fixed and total assets

41A	<u>Fixed assets</u>	<u>The book value of any property the <i>credit union</i> owns, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from 1A on CY.</u>
41B	<u>Revaluation amount</u>	<u>The amount by which the property fixed assets the <i>credit union</i> owns have been re-valued upwards, being the difference between current market values and the book values of the property fixed assets.</u>
41C	<u>Re-valued fixed assets</u>	<u>The current market values of the property fixed assets the <i>credit union</i> owns, including any amount for the upward revaluation of property fixed assets. so that:</u>  <b><u>41C = 41A + 41B</u></b>
41D	<u>Total assets</u>	<u>The value of total assets of the <i>credit union</i>, excluding any amount for the upward revaluation of property fixed assets. The amount entered here should be transferred from 1P on CY.</u>
41E	<u>Re-valued total assets</u>	<u>The current market value of total assets of the <i>credit union</i>, including any amount for the upward revaluation of property fixed assets, so that</u>  <b><u>41E = 41B + 41D</u></b>  <u>This amount will be used to determine which CREDS capital requirements apply to a <i>credit union</i>.</u>

**Adjusted reserves - total**

<u>42A</u>	<u>General reserves</u>	<u>The total amount held by the <i>Great Britain credit union</i> in general reserves at the end of the financial year. The amount entered here should be transferred from <b>2N</b> on CY.</u>
<u>42B</u>	<u>Other reserves</u>	<u>The total amount of money held by the <i>Great Britain credit union</i> in other reserves at the end of the financial year. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from <b>2P</b> on CY.</u>
<u>42C</u>	<u>Revaluation reserves</u>	<u>The amount of revaluation reserves held by the <i>Great Britain credit union</i>, arising from the differences between current market values and the book values of the property fixed assets.</u>
<u>42D</u>	<u>Deferred share reserves</u>	<u>The total amount held by the <i>Great Britain credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves.</u>
<u>42E</u>	<u>Adjusted reserves</u>	<p><u>The total amount of money held by the <i>Great Britain credit union</i> in reserves (including revaluation reserves and <i>deferred share</i> reserves), so that:</u></p> <p><b><u>42E = 42A + 42B + 42C + 42D</u></b></p> <p><u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u></p>

**Adjusted reserves - percentage**

43A	<u>Adjusted reserves as % of re-valued total assets</u>	To determine this ratio the <i>Great Britain credit union</i> should use the following formula:
		<u>Adjusted reserves (42E)</u>
		X
		<u>100</u>
		/
		<u>Re-valued total assets (41E)</u>
		<u>This amount will be used to determine whether a <i>Great Britain credit union</i> meets the reserve requirements for issuing interest-bearing shares under section 7A of the Act.</u>

#### Revaluation reserves – CREDS capital element

44A	<u>Total capital</u>	<u>The total amount held by the <i>credit union</i> as capital in the form of general reserves, other reserves and subordinated debt. This amount should not include deferred share reserves or revaluation reserves. The amount entered here should be transferred from <b>2S</b> on CY.</u>
44B	<u>Deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in the deferred share reserves. Under section 7(6) of the Act, where subscribed for in full, <i>Great Britain credit unions</i> must transfer a sum equal to the amount paid for <i>deferred shares</i> to its reserves. For <i>Northern Ireland credit unions</i>, the amount entered here will be nil.</u>
44C	<u>Total capital and deferred share reserves</u>	<u>The total amount held by the <i>credit union</i> in total capital and deferred share reserves so that:</u>  <b><u>44C = 44A + 44B</u></b>

44D	<u>1/3 of (Total capital and deferred share reserves)</u>	To determine this amount the <i>credit union</i> should use the following formula:
		1
		<u>X</u>
		<u>Total capital and deferred share reserves (44C)</u>
		/
		<u>3</u>
44E	<u>Revaluation reserves</u>	The amount of revaluation reserves held by the <i>credit union</i> that meets the requirements in <i>CREDS 5.2.1R(6)</i> to <i>CREDS 5.2.1R(7)</i> , arising from the differences between current market values and the book values of the property fixed assets.
44F	<u>Revaluation reserves – CREDS capital element</u>	<p>The amount of revaluation reserves that meets the limits in <i>CREDS 5.2.1(6)</i> to (8) and so can be included in capital.</p> <p><i>CREDS 5.2.1R(8)</i> states that the amount of revaluation reserves included in the calculation of capital must not be more than 25% of the total of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt, initial capital and revaluation reserves.</p> <p>The simplest way of reporting this amount accurately is to calculate an equivalent amount. An equivalent amount is a third of the sum of audited reserves, interim net profits, <i>deferred shares</i>, subordinated debt and initial capital, but excluding revaluation reserves. This is equivalent to a third of the sum of total capital and <i>deferred shares</i>, which is the amount at <b>44D</b>.</p> <p>So the amount that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements will be equal to either <b>44D</b> or <b>44E</b> above, whichever is the lower.</p>
<b>Adjusted capital – total</b>		
45A	<u>Total capital and deferred share reserves</u>	The total amount held by the <i>credit union</i> in total capital and deferred share reserves. This amount should be equal to <b>44C</b> above.
45B	<u>Revaluation reserves – CREDS capital element</u>	The amount of revaluation reserves that can be included in capital for the purpose of meeting the <i>CREDS</i> capital requirements. This amount should be equal to <b>44F</b> above.

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<u>45C</u>	<u>Adjusted capital</u>	<p><u>The sum of total capital, deferred share reserves and the CREDS capital element of revaluation reserves so that:</u></p> <p><b><u>45C = 45A + 45B</u></b></p> <p><u>This amount will be used to determine whether a <i>credit union</i> meets the CREDS capital requirements.</u></p>
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### **Adjusted capital – percentage**

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<u>45A</u>	<u>Adjusted capital as % of re-valued fixed assets</u>	<p><u>To determine this ratio the <i>credit union</i> should use the following formula:</u></p> <p><u>Adjusted capital (<b>45C</b>)</u></p> <p><u>X</u></p> <p><u>100</u></p> <p><u>∕</u></p> <p><u>Re-valued fixed assets (<b>41E</b>)</u></p> <p><u>This amount will be used to determine whether a <i>credit union</i> meets the CREDS capital requirements.</u></p>
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## Annex B

## Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

- 5.3.1 R A *deposit* is a *protected deposit* only if:
- ...
- (2) the *deposit* is not:
- (a) a bond issued by a *credit institution* which is part of the institution's capital, as set out in the Consolidated Banking Directive (Directive 2000/12/EC); or
- (aa) subordinated debt issued by a *credit union* meeting the requirements set out at CREDS 5.2.1R(4); or
- ...

## Annex C

## Amendments to the Credit Unions New sourcebook (CREDS)

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

[*Editor's Note:* The following amendments are made against the text of the Credit Unions (Northern Ireland) Instrument 2012 published as 'Near-final' rules in the FSA Policy Statement 11/18 ("FSA regulation of credit unions in Northern Ireland").]

Amend the following as shown.

- 4.2.1 R (1) A ~~Great Britain credit union~~ must not permit a member to have or claim any interest in the shares total non-deferred shares of the ~~Great Britain credit union, other than deferred shares,~~ exceeding the greater of:
- (a) £~~10,000~~ 15,000; or
- (b) 1.5 per cent of the total non-deferred shares in the ~~Great Britain credit union.~~
- (2) ~~A Northern Ireland credit union must not permit a member to have or claim any interest in the shares of the Northern Ireland credit union exceeding the greater of:~~
- (a) £15,000; ~~or~~
- (b) 1.5 per cent of the ~~total shares in the Northern Ireland credit union.~~ [deleted]
- ...
- 4.2.4 R ~~Shares in a Great Britain credit union must not be held in the joint names~~  
G ~~of more than two members. There is no restriction on the number of~~  
members who may jointly hold shares in a credit union.
- 4.2.4A G ~~There is no restriction on the number of members who may jointly hold~~  
~~shares in a Northern Ireland credit union.~~ [deleted]
- 4.2.5 R (1) For the purpose only of the ~~limit~~ limits in ~~CREDS 4.2.1R(1),~~  
CREDS 7.3.2R and CREDS 7.3.6R the interest of a member in a  
joint account must be treated as 50 per cent of the shareholding in  
that account the percentage represented by that individual member  
as a percentage of the total number of members holding an interest  
in the joint account.
- (2) ~~For the purpose only of the limit in CREDS 4.2.1R(2), the interest of~~  
~~a member in a joint account must be treated as the percentage~~  
~~represented by that individual member as a percentage of the total~~  
~~number of members holding an interest in the joint account.~~

[deleted]

...

- 5.1.6 G In addition to the capital requirements set out in this chapter, section 7A of the Credit Unions Act 1979 provides that a *Great Britain credit union* may issue interest-bearing shares only if, among other things, its most recent year end balance sheet shows that it holds reserves of at least £50,000 or 5% of its total assets, whichever is greater, and subject to compliance with any conditions specified by the FSA in a direction for the purposes of section 7A(1)(e) of the Credit Unions Act 1979.

[*Editor's Note:* The following amendments are made against the text of the Credit Unions New sourcebook (CREDS).]

- 5.2.1 R ...
- (8) The amount of revaluation reserve included in the calculation of capital must not represent more than 25 per cent of the total of capital resources in (1)(a) to ~~(e)~~ (f).
- 5.2.1A R The written agreement or instrument referred to in CREDS 5.2.1R(4)(g) must contain a prominent statement that the subordinated debt is not covered by the compensation scheme.

...

- 9.2.10 R A report under this section must be given or addressed, and delivered, in the way set out in SUP 16.3.6R to SUP 16.3.16G (General provisions on reporting), except that, instead of the *credit union's* usual supervisory contact, the report must be given to or addressed for the attention of the ~~Central Analysis and Reporting department~~ Data Monitoring team of the FSA.

...

## Sch 2 Notification requirements

- Sch 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant ~~record-keeping~~ notification requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

## Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...	...	...	...	...
<del><i>CREDS</i></del> <del>7.4.6G</del>	<del>Large exposures</del>	<del>Limits on large exposures to avoid concentration of risk</del>	<del>Upon request</del>	<del>As soon as reasonably practical</del>
<i>CREDS</i> 7.4.3R	<u>Large exposures</u>	<u>The aggregate total of all large exposures will exceed 300% of capital.</u>	<u>Prior to the aggregate total of all large exposures exceeding 300% of capital.</u>	<u>As soon as reasonably practicable.</u>
...				

## Appendix 7

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# Changes in Listing Rules and the Supervision manual for the UKLA provision of individual guidance

**LISTING RULES (RELATED PARTY TRANSACTIONS) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 73A (Part 6 Rules);
    - (b) section 138 (General rule-making power); and
    - (c) section 156 (General supplementary powers).
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Listing Rules (Related Party Transactions) Instrument 2012.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Glossary of definitions

*substantial  
shareholder*

~~(in LR) any person who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). Disregard for this purpose any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long term insurer in respect of its linked long term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long term insurer) as defined in LR 11.1.4AR.~~

## Annex B

## Amendments to the Listing Rules sourcebook (LR)

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

Definition of “substantial shareholder”

- 11.1.4A R In LR, a “substantial shareholder” means any person who is entitled to exercise, or to control the exercise of, 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). For the purposes of calculating voting rights, the following voting rights are to be disregarded:
- (1) any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long-term insurer in respect of its linked long-term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer); or
  - (2) any voting rights which a person may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
    - (a) underwriting the issue or sale of securities; or
    - (b) placing securities, where the person provides a firm commitment to acquire any securities which it does not place; or
    - (c) acquiring securities from existing shareholders or the issuer pursuant to an agreement to procure third-party purchases of securities;

and where the conditions in (i) to (iv) are satisfied:

    - (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
    - (ii) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;



- (iii) the voting rights are not exercised within the period the securities are held; and
- (iv) no attempt is made directly or indirectly by the firm to intervene (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

## Appendix 1.1 Relevant definitions

<i>substantial shareholder</i>	<del>any person who is entitled to exercise or to control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the company (or of any company which is its subsidiary undertaking or parent undertaking or of a fellow subsidiary undertaking of its parent undertaking). Disregard for this purpose any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long term insurer in respect of its linked long term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long term insurer) as defined in LR 11.1.4AR.</del>
<u>trading day</u>	<u>a day included in the calendar of trading days published by the FSA at <a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a></u>

**LISTING RULES (CONTACT WITH THE FSA) INSTRUMENT 2012****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- C. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to the instrument listed in column (2).

(1)	(2)
Supervision manual (SUP)	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

**Citation**

- D. This instrument may be cited as the Listing Rules (Contact with the FSA) Instrument 2012.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Supervision manual (SUP)

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

9.2.1 G Requests for individual *guidance* may be made in writing or orally. Requests for individual *guidance* in relation to the *Part 6 rules* should be made in writing other than in circumstances of exceptional urgency. If oral queries raise complex or significant issues, the *FSA* will normally expect the details of the request to be confirmed in writing. Simple requests for *guidance* may often be dealt with orally, although it is open to a *person* to seek a written confirmation from the *FSA* of oral *guidance* given by the *FSA*.

...

9.2.4 G The *FSA* does not expect to enter into discussions on a ‘no-name’ basis about the affairs of an individual *person* ~~except in relation to SUP 9.2.4AG.~~

9.2.4A G ~~The *FSA* may enter into discussions with a *person* on a ‘no-names’ basis about how a particular requirement in the *Part 6 rules* should be interpreted, but:~~

- (1) ~~the *FSA* will not be bound by any *guidance* given in response to the request; and~~
- (2) ~~the *person* receiving the *guidance* will not be able to rely upon it.~~  
[deleted]

## Annex B

## Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

## Early consultation with FSA

- 1.2.5 G An *issuer* or *sponsor* should consult with the *FSA* at the earliest possible stage if it:
- (1) is in doubt about how the *listing rules* apply in a particular situation;  
or
  - (2) considers that it may be necessary for the *FSA* to dispense with or modify a *listing rule*.
- 1.2.6 G Where a *listing rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency.

## Address for correspondence

**Note:** The *FSA*'s address for correspondence is:

....

## Annex C

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

In this Annex, underlining indicates new text.

## Early consultation with FSA

- 1.2.4 G *An issuer, person discharging managerial responsibilities or connected person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *disclosure rules* apply in a particular situation; or
  - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *disclosure rule*.

- 1.2.5 G Where a *disclosure rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

**Note:** The *FSA*'s address for correspondence is:

....

...

## Early consultation with FSA

- 1A.2.4 G *An issuer or other person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *transparency rules* apply in a particular situation; or
  - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *transparency rule*.

- 1A.2.5 G Where a *transparency rule* refers to consultation with the *FSA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

**Note:** The *FSA*'s address for correspondence in relation to the *disclosure rules* is:

....



## Appendix 8

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# Proposed changes to the Collective Investment Schemes sourcebook

**AUTHORISED CONTRACTUAL SCHEMES (HANDBOOK AMENDMENTS)  
INSTRUMENT 2012**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes the rules, standard terms and guidance in Annexes B and P to this instrument for VJ participants relating to the Voluntary Jurisdiction in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
  - (2) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme); and
  - (3) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.
- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

**Powers exercised by the Financial Services Authority**

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 139(4) (Miscellaneous ancillary matters);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 247 (Trust scheme rules);
    - (f) section 248 (Scheme particulars rules);
    - (g) section 261(C) (Applications for authorisation of contractual schemes);
    - (h) section 261(H) (Contractual scheme rules);
    - (i) section 261(I) (Contractual scheme particulars rules);
  - (2) regulation 6(1) (FSA 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 of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- E. This instrument comes into force on [1 July 2012].



## Amendments to the Handbook

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

(1)	(2)
Changes to several modules	Annex A
Glossary of Definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex D
Training and Competence sourcebook (TC)	Annex E
General Provisions (GEN)	Annex F
Fees manual (FEES)	Annex G
Prudential sourcebook for UCITS Firms (UPRU)	Annex H
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex I
Conduct of Business sourcebook (COBS)	Annex J
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex K
Client Assets sourcebook (CASS)	Annex L
Market Conduct sourcebook (MAR)	Annex M
Supervision manual (SUP)	Annex N
Decision Procedure and Penalties manual (DEPP)	Annex O
Dispute Resolution: Complaints sourcebook (DISP)	Annex P
Compensation sourcebook (COMP)	Annex Q
Collective Investment Schemes sourcebook (COLL)	Annex R
Professional Firms sourcebook (PROF)	Annex S
Listing Rules sourcebook (LR)	Annex T
Prospectus Rules sourcebook (PR)	Annex U
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex V

## Material outside the Handbook

- G. The Enforcement Guide (EG) is amended in accordance with Annex W to this instrument.
- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex X to this instrument.

## Notes

- J. 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

- K. This instrument may be cited as the Authorised Contractual Schemes (Handbook Amendments) Instrument 2012.

By order of the Board of the Financial Ombudsman Service Limited

[*x date*]

By order of the Board of the Financial Services Authority

[*y date*]

## 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), (2) and (3)	
			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 of an AUT or ACS</i>	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	
<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) and (3)	
			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 "authorised fund"	insert after "ICVC"	
		definition of "unitholder"	insert after "ICVC"	
	FINMAR	2.4.2G(2)	insert after "ICVC"	
	GEN	1.2.2R(2)(c)	insert after "AUT"	
	SUP	8.1.1R(2)	insert after "AUT"	
	COLL	3.1.1R(1), (3) and concluding wording	insert after "AUT"	
		4.1.1R(1), (3) and concluding wording	insert after "AUT"	
		4.2.3R(1)	insert after "AUT"	
		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”	
		first line and paragraph (a) and (b) of the definition of “unitisation”	insert after “AUT”	
	IPRU (INV)	5.2.3(2)R(ii)(c)	insert after “ICVC”	
		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	heading of 6.2.6R	insert after “AUT”	
		6.2.10R	insert after “AUT”	
or ACS,	CASS	7.2.8BR(1)	insert after “AUT”	
or <i>contractual scheme deed</i>	COLL	6.2.6R(3)	insert after “ <i>trust deed</i> ”	
		6.2.14R(1)	insert after “ <i>trust deed</i> ”	
or section 261O	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 261Q	COLL	11.6.3R(2)(a)	insert after “section 252A”	
		11.6.5R(3)(a)	insert after “section 252A”	
, section 261O 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>	the <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 the <i>depositary</i> .
<i>Contractual Scheme Regulations</i>	the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2012 (SI 2012/XXXX).
<i>contractual scheme rules</i>	<i>rules</i> in <i>COLL</i> made by the <i>FSA</i> under section 261H 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 <i>ACSs</i>;</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 <i>authorisation order</i> .
<i>limited partnership scheme</i>	(as defined in section 235A(5) of the <i>Act</i> (Contractual schemes)) a <i>collective investment scheme</i> which satisfies the conditions in section

235A(6) and which is authorised for the purposes of the *Act* by an *authorisation order*.

Amend the following as shown.

<i>affected person</i>	<p>...</p> <p>(b) (in relation to an <i>AUT</i>):</p> <p>...</p> <p>(v) the auditor of the <i>scheme</i>;</p> <p>(c) <u>(in relation to an <i>ACS</i>):</u></p> <p>(i) <u>the <i>authorised fund manager</i>;</u></p> <p>(ii) <u>the <i>depository</i>;</u></p> <p>(iii) <u>any <i>investment adviser</i> of the <i>authorised fund manager</i>;</u></p> <p>(iv) <u>any <i>associate</i> of any <i>person</i> in (c)(i), (ii) or (iii);</u></p> <p>(v) <u>the auditor of the <i>scheme</i>.</u></p>
<i>agreeing to carry on a regulated activity</i>	<p>the <i>regulated activity</i>, specified in article 64 of the <i>Regulated Activities Order</i> (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:</p> <p>...</p> <p>(f) ...</p> <p>(ff) <u>acting as the <i>depository</i> of an <i>authorised contractual scheme</i>;</u></p> <p>...</p>
<i>authorisation order</i>	<p>an order made by the <i>FSA</i>:</p> <p>... ..</p> <p>(c) <u>in relation to an <i>ACS</i> under section 261D of the <i>Act</i> (<i>Authorisation orders</i>);</u></p> <p>as a result of which the <i>AUT</i> or <i>ACS</i> becomes authorised or the body becomes incorporated as an <i>ICVC</i> under regulation 3 of the <i>OEIC Regulations</i> (Open-ended investment company).</p>
<i>authorised fund manager</i>	<p>an <i>ACD</i>, <u><i>authorised contractual scheme manager</i></u> or an <i>authorised unit trust manager</i>.</p>

<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 <i>contractual scheme deed</i> of an <i>ACS</i> as the base currency of the <i>ACS</i>.</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 <i>depository</i> of an <i>ACS</i>.</u></p>
<i>depository</i>	<p>(1) (except in <i>LR</i>):</p> <p>...</p> <p>(ca) ...</p> <p>(cb) <u>(in relation to an <i>ACS</i>) the <i>person</i> holding the property of the <i>scheme</i> for the <i>participants</i>, as required by section <u>235A(3)(d)(i) or (6)(d)(i) of the <i>Act</i> (Contractual schemes);</u></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> <p>(k) ...</p> <p>(ka) <u>acting as the <i>depository</i> of an authorised contractual scheme (article 51(1)(bb));</u></p> <p>...</p>
<i>FSA Register</i>	<p>the public record, as required by section 347 of the <i>Act</i> (The public record), regulation 4 of the <i>Payment Services Regulations</i> (The register of certain payment service providers) and regulation 4 of the <i>Electronic Money Regulations</i>, of every:</p>

	...
	(c)
	(ca) <u>ACS</u> ;
	...
<i>instrument constituting the scheme</i>	...
	(ba) ...
	(bb) <u>(in relation to an ACS) the contractual scheme deed</u> ;
	...
<i>investment adviser</i>	(in relation to an <i>authorised fund</i> ) a person who is retained by an <i>ICVC</i> , its <i>directors</i> or its <i>ACD</i> or by a <i>manager</i> of an <i>AUT</i> <u>or by an authorised fund manager of an ACS</u> under a commercial arrangement which is not a contract of service:
	...
<i>investment management firm</i>	... a <i>firm</i> ... which is within (a), (b) or (c):
	...
	(c) a <i>firm</i> :
	...
	(ii) for which the most substantial part of its gross income ... is derived from one or more of the following activities...:
	...
	(D) ...
	(Da) <u>acting as the authorised fund manager or depositary of an ACS</u> ;
	(E) <u>establishing, operating or winding up a collective investment scheme</u> (other than an <i>AUT</i> , <del>or</del> <i>ICVC</i> or <i>ACS</i> );
	...
<i>issue</i>	(in relation to <i>units</i> ):
	(1) (except in <i>EG 14</i> ) the issue of new <i>units</i> by the <i>trustee</i> of an

	<i>AUT</i> , <u>the depositary of an ACS</u> or by an <i>ICVC</i> ;
	...
<i>issuer</i>	(1) (except in <i>LR</i> , <i>PR</i> and <i>DTR</i> ):
	...
	(c) (in relation to an interest in a limited <i>partnership</i> <u>except for a <i>limited partnership scheme</i></u> ) the <i>partnership</i> ;
	...
	...
<i>management company</i>	(in accordance with article 2(1)(b) of the <i>UCITS Directive</i> ) a company, the regular business of which is the management of <i>UCITS</i> in the form of unit trusts, common funds ( <u>including <i>authorised contractual schemes</i></u> ) or investment companies ( <i>collective portfolio management</i> ), including, where permitted by its <i>Home State regulator</i> , the additional services referred to in article 6(3) of that directive.
<i>operator</i>	(1) (except in <i>EG</i> ):
	(a) ...
	(aa) <u>(in relation to an <i>ACS</i>) the <i>authorised fund manager</i></u> ;
	...
	(c) ...
	(ca) <u>(in relation to any other <i>collective investment scheme</i> that is a <i>contractual scheme</i>) any person who, under the <i>contractual scheme deed</i> establishing the scheme, is responsible for the management of the property held for or within the scheme.</u>
	...
	...
<i>overseas person</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) a <i>person</i> who:
	(a) carries on any of the following <i>regulated activities</i> :
	...
	(xiii) ...
	(xiiiia) <u><i>acting as the depositary of an authorised contractual</i></u>

	<u>scheme:</u>
	...
	...
<i>redemption</i>	<p>(1) ...</p> <p>(2) (in <i>EG 14</i> (Collective investment schemes)) redemption as in (1) but including their cancellation by:</p> <p style="padding-left: 2em;"><u>(a)</u> the <i>trustee</i> of an <i>AUT</i>;</p> <p style="padding-left: 2em;"><u>(b)</u> <u>the <i>depository of an ACS</i></u>; or <del>by</del></p> <p style="padding-left: 2em;"><u>(c)</u> an <i>ICVC</i>.</p>
<i>register</i>	<p>(1) ...</p> <p>(2) ...</p> <p>(3) (in <i>COLL</i>) the register of <i>unitholders</i> kept under Schedule 3 to the <i>OEIC Regulations</i> or <i>COLL 6.4.4R</i> (Register: general requirements and contents), or <i>COLL 8.5.8R</i> (The register of unitholders: <u>AUTs or ACSs</u>) as appropriate or, in relation to a <i>collective investment scheme</i> that is not an <i>authorised fund</i>, a record of the holders (other than of <i>bearer certificates</i>) of <i>units</i> in it.</p>
<i>regulated activity</i>	<p>(in accordance with section 22 of the <i>Act</i> (The classes of activity and categories of investment)) any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities):</p> <p style="text-align: center;">...</p> <p>(m) ...</p> <p><u>(ma) <i>acting as the depository of an authorised contractual scheme</i> (article 51(1)(bb));</u></p> <p style="text-align: center;">...</p>
<i>regulated collective investment scheme</i>	<p style="text-align: center;">...</p> <p>(b) ...</p> <p><u>(ba) <i>an ACS</i></u>; or</p> <p style="text-align: center;">...</p>
<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 *Act* (Other definitions)), which is the right or interest (however described) of the *participants* in a *collective investment scheme*; this includes:

(a) ...

(aa) (in relation to an ACS) a unit representing the rights or interests of the unitholders in the ACS; and

...

*unit trust scheme* (as defined in section 237(1) of the *Act* (Other definitions)) a *collective investment scheme* under which the property in question is held on trust for the *participants*, except that it does not include an authorised contractual scheme.

...

*unrecognised scheme* (in *LR*) a *collective investment scheme* which is neither a *recognised scheme* nor a scheme that is constituted as an *authorised unit trust scheme* or authorised contractual scheme.

*waiver* a direction waiving or modifying a *rule*, given by the *FSA* under sections 148, 250, 261K or 294 of the *Act* (~~Waiver or modification~~ Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (Modification or waiver of FSA rules) (see *SUP* 8 and *REC* 3.3).

## Annex C

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

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

**Schedule 6      Rules that can be waived**

6.1              G

	<p>As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) <u>and regulation 2(3) of the <i>Contractual Scheme Regulations</i></u> the <i>FSA</i> has power to waive all its <i>rules</i>, other than <i>rules</i> made under section 247 (Trust scheme rules), <del>or</del> section 248 (Scheme particulars rules), <u>section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules)</u> of the <i>Act</i>. However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FSA</i> to grant a waiver that would be incompatible with the <i>United Kingdom's</i> responsibilities under those directives.</p>
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## Annex D

## Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

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

## Schedule 6 Rules that can be waived

## 6.1 G

	<p>As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) <u>and regulation 2(3) of the <i>Contractual Scheme Regulations</i></u> the <i>FSA</i> has power to waive all its <i>rules</i>, other than <i>rules</i> made under section 247 (Trust scheme rules), <del>or</del> section 248 (Scheme particulars rules), <u>section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules)</u> of the <i>Act</i>. However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FSA</i> to grant a waiver that would be incompatible with the <i>United Kingdom's</i> responsibilities under those directives.</p>
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## Annex E

## Amendments to the Training and Competence sourcebook (TC)

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

## Schedule 6 Rules that can be waived

## 6.1 G

	<p>As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) <u>and regulation 2(3) of the <i>Contractual Scheme Regulations</i></u> the <i>FSA</i> has power to waive all its <i>rules</i>, other than <i>rules</i> made under section 247 (Trust scheme rules), <del>or</del> section 248 (Scheme particulars rules), <u>section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules)</u> of the <i>Act</i>. However, if the <i>rules</i> incorporate requirements laid down in European directives, it will not be possible for the <i>FSA</i> to grant a waiver that would be incompatible with the <i>United Kingdom's</i> responsibilities under those directives.</p>
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## Annex F

## Amendments to the General Provisions (GEN)

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

## Schedule 4 Powers exercised

## 4.2 G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>GEN</i> :	
	...
	Section 248 (Scheme particulars rules)
	<u>Section 261C (Applications for authorisation of contractual schemes)</u>
	<u>Section 261H (Contractual scheme rules)</u>
	<u>Section 261I (Contractual scheme particulars rules)</u>
	...

...

## 4.7 G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> in <i>GEN</i> to direct, require or specify:	
	...
	Sections 250(4) and (5) (Modification or waiver of rules)
	<u>Section 261C (Applications for authorisation of contractual schemes)</u>
	<u>Section 261K (Modification or waiver of rules)</u>
	...

...

## Schedule 6 Rules that can be waived

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) <u>and regulation 2(3) of the <i>Contractual Scheme Regulations</i></u> the <i>FSA</i> has power to waive all its
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*rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives. It therefore follows that if a *rule* contains provisions which derive partly from a directive, and partly not, the *FSA* will be able to consider a *waiver* of the latter requirements only, unless the directive provisions are optional rather than mandatory.

...

## Annex G

## 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

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...	...	...	...
Any <i>manager</i> of an <i>authorised</i> unit trust;	In relation to each unit trust the amount specified in <i>FEES 4 Annex 4R</i>	(1) Unless (2) applies, on or before 30 April (2) If an event in column 4 occurs during the course of a financial 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 1R Activity groups, tariff bases and valuation dates applicable

<p><b>Part 1</b> This table shows how the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> are linked 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>.</p>	
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	<p>(1) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p>...</p> <ul style="list-style-type: none"> <li>• <i>acting as trustee of an authorised unit trust scheme;</i></li> <li>• <i>acting as the depositary of an authorised contractual scheme;</i></li> </ul> <p>...</p>
...	
<p><b>Part 2</b> This table indicates the tariff base for each fee-block. The tariff base is the means by which we measure the 'amount of business' conducted by a <i>firm</i>. Note that where the tariff base is the number of <i>approved persons</i> it may be that a particular <i>firm</i> has <i>permission</i> for relevant activities as described in Part 1 but the type of activity that the <i>firm</i> undertakes is not one requiring a <i>person</i> to be approved to undertake a relevant <i>customer function</i> (for example <i>firms</i> only giving <i>basic advice on stakeholder products</i>). In these circumstances, the <i>firm</i> will be required to pay a minimum fee only (see FEES 4 Annex 2 R Part 1).</p>	
Activity group	Tariff base
...	
<b>A.9</b>	<p><b>GROSS INCOME</b></p> <p>For <i>operators</i> (including <i>ACDs</i> and <del>managers</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>):</p> <p>...</p>
	<p><b>PLUS</b></p> <p>...</p> <p>For <i>depositaries</i> (including <i>trustees</i> of <i>collective investment schemes</i> and <i>ICVC depositaries</i> or <i>ACS depositaries</i>):</p> <p>The amount of the annual charge levied on funds in <i>regulated collective investment schemes</i> for which they act as <i>depositary</i> (typically a % of</p>

	the total funds for which they act as <i>depository</i> ).
	...
...	

...

[Editor's note: The amendments below to FEES 4 Annex 4R assume that the changes published in CP12/03 are made as consulted on.]

#### 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>	585	1 – 2	1	585
		3 – 6	2.5	1,463
		7 – 15	5	2,925
		16 – 50	11	6,435
		> 50	22	12,870
...				

...

#### 6 Annex 3R Financial Services Compensation Scheme - classes and sub-classes

...

Class D	Investment
...	
Legal basis for activity in sub-class D1	Any of the following:
	...
	<i>acting as trustee of an authorised unit trust scheme;</i>
	<i><u>acting as the depository of an authorised contractual scheme;</u></i>



	...
...	

## Annex H

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

In this Annex, underlining indicates new text.

...

#### Schedule 4 Powers exercised

##### 4.1 G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>UPRU</i> :	
	...
	Section 248 (Scheme particulars rules)
	<u>Section 261C (Applications for authorisation of contractual schemes)</u>
	<u>Section 261H (Contractual scheme rules)</u>
	<u>Section 261I (Contractual scheme particulars rules)</u>
	...

...

## Annex I

**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*

- (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));

...

<b>Table 5.2.3(5)(a)</b>	<b>EXPENDITURE BASED REQUIREMENT</b>		
	...		
	<b>PART II</b>		
	<b>FRACTIONS</b>		
	1:	The fraction is 6/52 where:	
		(a)	...
		(aa)	<u>the firm is an authorised contractual scheme manager; or</u>
	...		
<b>Note:</b>	Paragraph 1(a) above includes a <i>firm</i> which acts as <del>both</del> an <i>authorised unit trust manager</i> and, <u>in addition</u> , as <u>both or either</u> :		
	(a)	an <i>authorised corporate director</i> of an <i>ICVC</i> ; <u>or</u>	
	(b)	<u>an authorised contractual scheme manager.</u>	

...

<b>Table 5.2.3(5)(e)</b>	<b>OTHER ASSETS REQUIREMENT</b>	
	...	
	<b>PART II</b>	
	<b>RISK FACTORS</b>	
	<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
	<b>Note</b>	
	This only applies to <i>firms</i> who are <i>authorised unit trust managers</i> in relation to authorised unit trusts <u>or</u> <i>authorised contractual scheme managers</i> in relation to <u>authorised contractual schemes</u> they manage.	
	...	

...

**APPENDIX 1 (INTERPRETATION)**

Glossary of terms for Chapter 5 (Former IMRO Firms)

...

**Term            Meaning**

...

authorised contractual scheme    a co-ownership scheme or a limited partnership scheme.

authorised contractual scheme manager    means the authorised fund manager of an authorised contractual scheme.

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 J

## Amendments to the Conduct of Business sourcebook (COBS)

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

## 14.2 Providing product information to clients

...

- 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*.

...

...

## Schedule 6 Rules that can be waived

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

**Annex K****Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)**

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

**Schedule 6 Rules that can be waived**

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the Contractual Scheme Regulations the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

**Annex L****Amendments to the Client Assets sourcebook (CASS)**

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

**Schedule 6 Rules that can be waived**

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

**Annex M****Amendments to the Market Conduct sourcebook (MAR)**

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

**Schedule 6 Rules that can be waived**

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



## Annex N

## Amendments to the Supervision manual (SUP)

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

## 6.1 Application 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*, *ACSSs* 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 261K of the *Act* and regulation 7 of the *OEIC Regulations* allow the *FSA* 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*), or 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 261K 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 261K of the *Act* and regulation 7 of the *OEIC Regulations* work by giving effect to section 148 of the *Act* in respect of *waivers* given under section 250(2) and (3), section 261K(2) and (3) and regulation 7(1) and (2) of the *OEIC Regulations*.

...

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

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>SUP</i>	...	
	<p><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 EEA UCITS management company providing <i>collective portfolio management</i> services for a UCITS scheme 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 UCITS scheme where, for example, the <i>firm</i>:</p> <p>...</p> <p>(b) wishes to apply for an <i>authorisation order</i> to establish an AUT, <u>ACS</u> or ICVC as a UCITS scheme; or</p> <p>...</p>	
...		

...

**16.1 Application**

...

Application of different sections of SUP 16 (excluding SUP 16.13 and SUP 16.15)

16.1.3	R	(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 16.6.8R</i>
		...		

...

**16.6 Compliance reports**

...

Applicable provisions of this section (see SUP 16.6.1G)

16.6.2	G	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.

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

16.6.7	R	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 <i>SUP</i> 16.6.8R(1)	Quarterly	1 month after quarter end (Note)
Report from a <u>depository of an ACS</u> on failures by the <u>authorised contractual scheme manager</u> as set out in <i>SUP</i> 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 *depository* of an *ACS* to the *FSA* must state, in relation to the *authorised contractual scheme manager* of each *ACS* for which the *firm* is a *depository*, 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 FSA's guidance as set out in COLL 6.2.12 G;

(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 depository 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 16.6.8 R(1), and the report from a depositary 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

...

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

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

...

## Appendix 1 Prudential categories and sub-categories

### 1.8 Notes to Figures 1 and 2

...

1.8.2	G	<b>Note 2</b>
...		
Activities from which the most substantial part of the firm’s gross income, (including commissions), from designated investment business is derived		Firm’s prudential category

<p>...</p> <p>(iii) acting as the <i>manager</i> or <i>trustee</i> of an <i>AUT</i>;</p> <p><u>(iia) acting as the authorised contractual scheme manager or depositary of an ACS;</u></p> <p>...</p> <p>(v) <i>establishing, operating or winding up a collective investment scheme</i> other than an <i>AUT</i>, <u>ACS</u> or <i>ICVC</i>;</p> <p>...</p>	<i>Investment management firm</i>
...	

...

## Schedule 2 Notification requirements

...

### 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 16.6.6R	Reporting – compliance reports – <i>trustee</i> of an <i>AUT</i>	...	...	...
<u><i>SUP</i></u> <u>16.6.8R</u>	<u>Reporting – compliance reports – depositary of an ACS</u>	<p><u>In relation to the authorised contractual scheme manager of each ACS for which it 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:</u></p> <p><u>(a) arrange for the issue or cancellation of units in the ACS</u></p>	Quarterly (the quarter ends are 31 March, 30 June, 30 September, 31 December).	One month.

		<p><u>when the <i>authorised contractual scheme manager</i> should have done so, and the error:</u></p> <p><u>(i) resulted in the creation of too few <i>units</i> or in the cancellation of too many <i>units</i>; and</u></p> <p><u>(ii) was not corrected in accordance with the <i>FSA's guidance</i> as set out in <i>COLL 6.2.12G</i>;</u></p>		
		<p><u>(b) price <i>units</i> in the <i>ACS</i> in accordance with <i>COLL 6</i>, where the pricing error was:</u></p> <p><u>(i) greater than 0.5% of the price of a <i>unit</i>;</u></p> <p><u>or</u></p> <p><u>(ii) less than 0.5% of the price of a <i>unit</i>, and the <i>depository</i> did not consider the <i>authorised contractual scheme manager's</i> controls to be adequate; unless the failure was an isolated incident.</u></p>		
...				

...

#### Schedule 4 Powers exercised

##### 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *SUP*:

	...
	Section 247 (Trust scheme rules)
	Section 261H (Contractual scheme rules)

	...
--	-----

...

## 4.3 G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* in *SUP* to direct or require:

	...
	Section 250(4) and (5) (Modification or waiver of rules)
	<u>Section 261K(4) and (5) (Modification or waiver of rules)</u>
	...

...

**Schedule 6 Rules that can be waived**

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



## Annex O

## 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* 23.5.12G are:

(1) ...

(1A) the decision to give a *supervisory notice* pursuant to section 261Y(3), (8) or (9)(b) (Procedure on giving directions under section 261V or 261X and varying them on Authority'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 261T or 261Z 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 *FSA* 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 *FSA* 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>261F(1)/(2)</u>	<u>when the <i>FSA</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>COLL 2</u>	<u><i>RDC</i> or <i>executive procedures</i></u> <u>See <i>DEPP</i> 2.5.15G</u>
<u>261P(1)/(4)</u>	<u>when the <i>FSA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>depository</i> or <i>authorised fund manager</i> of an <i>ACS</i></u>	<u>COLL 2</u>	<u><i>Executive procedures</i></u>
<u>261Q(4)(b)/(6)(a)</u>	<u>when the <i>FSA</i> is proposing or deciding to refuse approval of a proposal by the <i>authorised fund manager</i> of 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>COLL 11</u>	<u><i>Executive procedures</i></u>
<u>261T(1)/(2)</u>	<u>when the <i>FSA</i> is proposing or deciding to make an order under section 261S revoking the <i>authorisation order</i> of an <i>ACS</i>*</u>	<u>None, but see Chapter 14 of the <i>Regulatory Guide EG</i>.</u>	<u><i>RDC</i></u>

<u>261U(4)/(5)</u>	when the <i>FSA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>ACS</i>		<u>RDC</u>
<u>261Z(1)/(2)</u>	when the <i>FSA</i> , on an application to revoke or vary a direction under section 261V, 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>RDC</u>
...			
345(2)/(3)	when the <i>FSA</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>
...			

## Annex P

## Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~30 April 2011~~ 1 July 2012) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1 G*);

...

...

### 2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~30 April 2011~~ 1 July 2012

This table belongs to *DISP 2.5.1R*

The activities which (at ~~30 April 2011~~ 1 July 2012) were *regulated activities* for the *Voluntary Jurisdiction* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

(21) ...

(21A) *acting as the depositary of an authorised contractual scheme* (article 51(1)(bb))

...

...

**Schedule 6 Rules that can be waived**

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

## Annex Q

## Amendments to the Compensation sourcebook (COMP)

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

...

...

## Schedule 6 Rules that can be waived

6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

## Annex R

## 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 and depositaries 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*, or a “*manager*” of an *AUT* which in either case or an *authorised fund 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*, ~~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*]

...

## 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 *FSA* 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 *FSA* certain fund documentation, as specified by *COLL 12.3.4R* (Provision of documentation to the *FSA*: 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 *regulatory objective* of protecting *consumers*. In particular:
- (1) *COLL 3.2* (The instrument constituting the scheme) contains requirements about provisions which must be included in the *instrument constituting the scheme* to give a similar degree of



protection for investors in an *ICVC* ~~or in an *AUT*~~, *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) ...

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 fund manager* and the *depository*.

...

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)

...	
	Issue or cancellation directly through the <i>ICVC</i> or <del>trustee</del> <u>depository of an <i>AUT</i> or <i>ACS</i></u>
11	Where relevant, a statement authorising the <i>issue</i> or <i>cancellation</i> of <i>units</i> to take place through the <i>ICVC</i> or <del>trustee</del> <u>depository of an <i>AUT</i> or <i>ACS</i></u> directly.
...	
	<u>Co-ownership schemes: Umbrella schemes - principle of limited recourse</u>
22B	<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 participants in</u>

	<u>that <i>sub-fund</i> and must not be used to discharge any liabilities of the <i>participants</i> in any other <i>sub-fund</i>.</u>	
...		
27	...	
	<u>ACSs: 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, Wales or Scotland or Northern Ireland.</u>	
	<u>ACSs: contractual scheme deed to be binding and authoritative</u>	
<u>27B</u>	<u>A statement that the <i>contractual scheme deed</i>:</u>	
	(1)	<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>
	(2)	<u>authorises and requires the <i>depository</i> and the <i>authorised fund manager</i> to do the things required or permitted of them by its terms.</u>
	<u>ACSs: 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 261H of the <i>Act</i> (Contractual scheme rules) and for the time being in force:</u>	
	(1)	<u>the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by the <i>depository</i> for and on behalf of the <i>unitholders</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>; and</u>
	(2)	<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</i> 6.8 (Income: accounting, allocation and distribution).</u>
	<u>ACSs: 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>ACSs: unit transfers</u>	
<u>27E</u>	<u>A statement that <i>units</i> are not transferable unless the <i>units</i> are transferred:</u>	
	(1)	<u>on the death of any joint <i>holder</i> to the surviving joint <i>unitholder</i> or <i>unitholders</i>; or</u>
	(2)	<u>on the death of a <i>holder</i> (who was not a joint <i>holder</i>) to the deceased</u>

		<u>holder's executor or administrator; or</u>
	(3)	<u>to another person when required by insolvency law; or</u>
	(4)	<u>to a body corporate upon the merger or restructuring of the holder;</u> <u>or</u>
	(5)	<u>when the law otherwise requires their transfer.</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> ;

	(c)	...
	(ca)	<u>for an ACS that is a limited partnership scheme, the address of the proposed principal place of business of the limited partnership scheme;</u>
	...	
Umbrella ICVCs or co-ownership schemes		
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 which is an umbrella, 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 which is an umbrella, a statement that the property subject to a sub-fund is beneficially owned by the participants in that sub-fund and must not be used to discharge any liabilities of the participants in any other sub-fund; and</u>
	(b)	<u>for an ICVC or a co-ownership scheme which is an umbrella, a statement that while the provisions of the OEIC Regulations, and section 261N (Pooling in relation to separate parts of the property) 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 261N.</u>
	...	
Contracts and other relationships with parties		
11	The following relevant details:	
	...	
	(c)	a summary of the material provisions of the contract between the ICVC or the <del>manager</del> <u>authorised fund manager</u> of the AUT or ACS and the <i>depository</i> which may be relevant to <i>unitholders</i> , including provisions relating to the <i>remuneration</i> of the <i>depository</i> ;
	(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</i> of the ICVC or the <del>manager</del> <u>authorised fund manager</u> of the

		<i>AUT or ACS</i> is a member, that fact;
	...	
...		
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</i> or <i>cancellation</i> of <i>units</i> by an <i>ICVC</i> or by the <del><i>trustee</i></del> <i>depository</i> of an <i>AUT</i> or <i>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</i> scheme 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</i> or <i>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</i> or <i>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 *depository* 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><i>Manager of an AUT</i></del> <u><i>Authorised fund manager of an AUT or ACS</i></u>	<del><i>Depository of an ICVC</i></del> <u><i>AUT or ACS</i></u>	<del><i>Trustee of an 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 for 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 *ACS*);

...

**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*, 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	<i>ICVC</i>	<i>ACD</i>	<del><i>Manager of an AUT</i></del> <i>Authorised fund manager of an AUT or ACS</i>	<i>Depository of an ICVC</i>	<del><i>Trustee of an AUT</i></del> <i>Depository of an AUT or ACS</i>
...					

...

**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~~ *depository* 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~~ depository; 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*, and is permitted to *sell* and *redeem* *units* for its own account. An authorised fund manager of an *AUT* or *ICVC* is permitted to *sell* and *redeem* *units* for its own account.~~ An authorised fund manager of an *AUT* or *ICVC* is permitted to *sell* and *redeem* *units* for its own account. The *rules* in this section are intended to ensure that the *authorised fund manager* treats the *authorised fund* fairly when arranging for the *issue* or *cancellation* of *units*, and treats *clients* fairly when they purchase or *sell* *units*.
- (3) This section also sets out common standards for how the amounts in relation to *unit* transactions are to be paid. These arrangements include the *initial offer* of *units*, the exchange of *units* for *scheme property* and *issues* and *cancellations* of *units* by an *ICVC*, or by the ~~trustee~~ depository of an *AUT* or *ACS*, carried out directly with the *unitholder*.
- (4) This section also sets out *rules* and *guidance* relating to the *authorised fund manager's* controls over the *issue* and *cancellation* of *units* including, where applicable, any box holdings.
- ...

...

## 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*~~ *depository* of an *AUT* or *ACS*.

(2) ...

## Controls over the issue and cancellation of units

6.2.8 R (1) ~~Subject to (4), an~~ *authorised fund manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.

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

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

...

...

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

(4) For the purpose of (1), an *authorised fund manager* of an *ACS* must ensure that at each *valuation point* the number of *units* in *issue* of any *class* equals the number of *units* registered to *unitholders* for that *class*.

...

## Compensation for box management errors

6.2.11 R (1) Where the *authorised fund manager* of an *AUT* or *ICVC* has not complied with *COLL* 6.2.8R(1) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.

(2) The *authorised fund manager* of an *AUT* or *ICVC* need not reimburse the *authorised fund* when:

...

...

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 fund 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 depositary* 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.

...

#### 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 the requirements in COLL 6.4.6AR (Transfer of units in an ACS) are satisfied, 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 or 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 Units in an ACS may only be transferred:

- (1) on the death of any joint holder to the surviving joint unitholder or unitholders; or
- (2) on the death of a holder (who was not a joint holder) to the deceased holder's executor or administrator; or
- (3) to another person when required by insolvency law; or
- (4) to a body corporate upon the merger or restructuring of the holder; or
- (5) when the law otherwise requires their transfer.

...

#### **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>Depository</i> of an <i>ICVC</i>	<i>Manager</i> <u><i>Authorised</i></u> <u><i>fund</i></u> <u><i>manager</i></u> of an <i>AUT</i> or <i>ACS</i>	<del>Trustee</del> <u><i>Depository</i></u> of an <i>AUT</i> or <i>ACS</i>
...						
6.5.9R*					x	x
...						
Note Notes	(1)	“x” means “applies”, but not every paragraph in every <i>rule</i> will necessarily apply.				
	(2)	* <i>COLL 6.5.9R</i> only applies to the <i>manager</i> and the <i>trustee</i> of an <i>AUT</i> .				

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.

...

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

...

Table of application

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

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

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

...

Duties of the ACD of an ICVC or the authorised fund 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 fund manager of a co-ownership scheme which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* or authorised fund 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 fund manager of the co-ownership scheme must:

...

- 6.6.5B G In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or authorised fund 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 fund 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>	<u>ICVC</u> <i>ICVC</i>	<u>ACD</u> <i>ACD</i>	<i>Depository of</i> <i>an ICVC,</i> <i>AUT or ACS</i>	<i>Manager</i> <i>Authorised fund</i> <i>manager of an</i> <i>AUT or ACS</i>	<i>Trustee of an</i> <i>AUT</i>
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 *depositary*, 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 *depositary* and *authorised fund manager* of an *ACS*. *COLL* 6.9.3G to *COLL* 6.9.5G give the *FSA's* view of the meaning of independence of these relationships. An *ICVC*, its *directors* and *depositary* or a *manager* and a *trustee* of an *AUT* or an *authorised fund manager* and *depositary* 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 *FSA* will consider in determining whether the name of an *authorised fund* is undesirable or misleading. It is in addition to the requirements of regulation 19 of the *OEIC Regulations* (Prohibition on certain names).

...

### 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*~~ 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>ICVC</i>	<i>Depository</i> of an <i>ICVC</i>	<del><i>Manager</i></del> <u><i>Authorised fund manager</i></u> of an <i>AUT</i> or <i>ACS</i>	<del><i>Trustee</i></del> <u><i>Depository</i></u> of an <i>AUT</i> or <i>ACS</i>
...						
7.4*					x	x
7.4A*					x	x
...						
<b>Note</b> <u>Notes:</u>	<p>"x" means "applies", <u>but not every paragraph in every rule will necessarily apply.</u></p> <p><u>*COLL 7.4 does not apply to the authorised fund manager or depository of an ACS.</u></p> <p><u>*COLL 7.4A does not apply to the authorised fund manager or depository of an AUT.</u></p>					

#### Purpose

- 7.1.3 G (1) ...
- (2) This chapter also helps with the *regulatory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs*, ~~and~~ *AUTs* and *co-ownership schemes*. *EG* 14 (Collective investment schemes) deals with the *FSA*'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 (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 261U of the *Act* (Requests for revocation of authorisation order), the *authorised fund manager* or *depository* of an *ACS* may request the *FSA* to revoke the *authorisation order* in respect of that *ACS*. The *FSA* 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 *FSA* will agree to that request. Section 261V of the *Act* (Directions) gives the *FSA* 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 261O of the *Act* (Alteration of contractual schemes and changes of operator or depository). Termination can only commence once the proposed alterations to the *contractual scheme deed* and *prospectus* have been notified to the *FSA* 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 261O 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 *FSA rules*, assuming *FSA 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 261O 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* is to be wound up or terminated in connection with a *scheme of arrangement*; and
- (b) a “section 261U 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*)

Summary of the main steps in winding up an *ACS* or terminating a *sub-fund* of a *co-ownership scheme* under *FSA rules*

Notes: N = Notice to be given to the *FSA* under section 261O of the *Act* in a section 261O case.

R = Request to wind up the *scheme* under section 261U of the *Act* in a section 261U case.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period

Step number	Explanation	When	<i>COLL rule</i> (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 <i>FSA</i> 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	<p>In a section 261O case:</p> <ul style="list-style-type: none"> <li>- the <i>authorised fund manager</i> receiving <i>FSA</i> approval;</li> <li>- or one month having passed after submitting the requisite notice under section 261O of the <i>Act</i> without the <i>authorised fund manager</i> or <i>depository</i> having received from the <i>FSA</i> a warning notice under section 261P in respect of the proposal.</li> </ul> <p>In a section 261U case, the <i>authorised fund manager</i> or <i>depository</i> receive an indication from the <i>FSA</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>FSA</i> will agree to the request to wind up the <i>ACS</i>.</p>	N + one <i>month</i> or R + one <i>month</i>	<p>Section 261O of the <i>Act</i> (in a section 261O case)</p> <p>7.4A.4R(3)(c) to (e) (in a section 261U case)</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	Within 4 <i>months</i> of	7.4A.9R(7)

	report of <i>authorised fund manager</i> , <i>depository</i> and auditor to the <i>FSA</i>	FAP	
7	Request <i>FSA</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 *depository* 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 fund manager* must cease to *sell* and redeem *units*;
  - (d) the *authorised fund 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 *depository* must proceed to wind up the *ACS* or terminate the *sub-fund* in accordance with *COLL 7.4A.6R*.
- (2) If the *authorised fund 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 261O (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 *FSA's* prior consent to the resolution has been obtained by the *authorised fund manager* or *depositary*;
  - (d) in response to a request to the *FSA* by the *authorised fund manager* or the *depositary* for the revocation of the *authorisation order*, the *FSA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *ACS*, the *FSA* 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 261O case either:
      - (A) the *FSA* has given written approval to the proposal; or
      - (B) one *month* has passed since the *authorised fund manager* gave notice under section 261O without the *authorised fund manager* or



*depository* having received from the *FSA* a warning notice under section 261P in respect of the proposal; or

- (ii) in a section 261U case, the *FSA* indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the *ACS*, the *FSA* 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 *FSA* under *COLL 7.4A.5* (Solvency statement) and received by the *FSA* prior to the satisfaction of the condition in (a).

- (5) This *rule* is without prejudice to:

- (a) *COLL 7.2.1R* (Requirement);
- (b) any order or direction made under section 261V (Directions) or 261W (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.

- 7.4A.5 R (1) Either before notice is given under section 261O of the *Act* or before a request is made under section 261U of the *Act* in relation to the proposals referred to in *COLL 7.4A.4R(4)*, the *authorised fund 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 fund 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 *FSA* under section 261O or a request is made under section 261U.
- (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 *FSA* and the *depository* no later than 21 days after notice is given to the *FSA* in accordance with section 261O of the *Act* or the request made in accordance with section 261U of the *Act*.

#### Manner of winding up or termination

- 7.4A.6 R (1) Where *COLL 7.4A.4(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 fund 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 having to 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 *FSA* in writing and at the same time the *authorised fund manager* or *depository* must request the *FSA* 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 fund 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 fund 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 fund 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 fund manager* rejects any claim or liability against the *ACS* or the *sub-fund* in whole or part, the *authorised fund 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 fund manager* is not required to prepare a short report (*COLL 4.5.13 R* (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 fund 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 fund manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.
- (5) The *authorised fund 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 fund manager* and *depository* must be published and sent to the *FSA*.
- (8) The *authorised fund 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 fund manager* and *depository*, is that the *authorised fund 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 fund manager

- 7.4A.11 R
- (1) Except to the extent that the *authorised fund manager* can show that it has complied with *COLL 7.4A.8R* (Duty to ascertain liabilities), the *authorised fund 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 fund 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 fund 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 fund manager* can show that the deficit did not arise as a result of any failure by the *authorised fund manager* to comply with the *rules* in *COLL*.
- (3) The liabilities of the *authorised fund manager* under this *rule* create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the *ACS* in the circumstances described in (2)).
- (4) The obligations of the *authorised fund manager* under this *rule* do not affect any other obligation of the *authorised fund 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 fund 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 fund 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 *twelvemonths* of the date of the statement provided under *COLL* 7.4A.5R(2)(a); the *authorised fund 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 Part V of the Insolvency Act 1986.

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 *FSA* expects that the majority of requests it will receive for the winding up of an *authorised fund* (under regulation 21(1) of the *OEIC Regulations* or under ~~section~~ sections 256 or 261U 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 FSA

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 *FSA*'s decision under sections 251, ~~and~~ 256, 261O and 261U 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 *FSA* under section 251 (Alteration of schemes and changes of manager or trustee) or 261O (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 *FSA* to a proposed merger under regulation 9 of the *UCITS Regulations 2011*.

...

...

## 8.2 Constitution

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to *COLL 8.2.5R*

1	Description of the authorised fund	
	Information detailing:	
	...	
	(2)	that the <i>authorised fund</i> is a <i>qualified investor scheme</i> ; <del>and</del>
	(3)	in the case of an <i>ICVC</i> , whether the head office of the <i>company</i> is situated in England and Wales or Wales or Scotland or Northern Ireland; <u>and</u>
	(4)	<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>
	...	
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>, a statement that the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> and must not be used to discharge any liabilities of the <i>participants</i> in any other <i>sub-fund</i>;</u>
	(5)	for an <i>AUT</i> :
		...

		(c)	a <i>unitholder</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> he holds; <del>and</del>	
		(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> ; <del>and</del>	
	(6)	<u>for an ACS:</u>		
		(a)	<u>the contractual scheme deed:</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 fund manager</i> to do the things required or permitted of them by its terms; and</u>
			(iv)	<u>states that <i>units</i> are not transferable, unless the <i>units</i> are being transferred;</u>
			(A)	<u>to a surviving joint <i>holder</i> upon the death of a joint <i>holder</i>; or</u>
			(B)	<u>to the executor or administrator of the <i>holder's</i> estate upon the death of the <i>holder</i> (where the <i>holder</i> was not a joint <i>holder</i>); or</u>
			(C)	<u>to another <i>person</i> when required by insolvency law; or</u>
			(D)	<u>to a <i>body corporate</i> upon the merger or restructuring of the <i>holder</i>; or</u>
			(E)	<u>when the law otherwise requires their transfer;</u>
		(b)	<u>subject to the provisions of the <i>contractual scheme deed</i> and all the <i>rules</i> made under section 261H of the <i>Act</i> (Contractual scheme rules):</u>	
			(i)	<u>the <i>scheme</i> (other than sums held to the credit of the distribution account) is held by the <i>depository</i> for and on behalf of the <i>unitholders</i> or, where</u>



			<u>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>
		(ii)	<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>
		(c)	<u>a <i>unitholder</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> he holds.</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> , <i>ACS</i> or an <i>AUT</i> ;	
...		
(8)	where relevant, the maximum and minimum sizes of the <i>ICVC's</i> 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; <u>and</u>	
(10)	<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>	
...		
6	The authorised fund manager	

	The following particulars of the <i>depository</i> :	
	...	
	(8)	for an <i>AUT</i> or <i>ACS</i> , the names of the <i>directors</i> of the <del><i>manager</i></del> <i>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 <del><i>trustee</i></del> <i>depository</i> of an <i>AUT</i> or <i>ACS</i> (as appropriate) may occur and the relevant procedures for such <i>issues</i> and <i>cancellations</i> ; 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 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; and</u>
	(aa)	<u>for a <i>co-ownership scheme</i>, the property subject to a <i>sub-fund</i> is beneficially owned by the participants in that <i>sub-fund</i> and must not be used to discharge any liabilities of the participants in any other <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 261N (Pooling in relation to separate parts of the property) 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</u>

			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> <u>or, as the case may be, section 261N</u> .
...			
19	Additional information		
	Any other material information which is within the knowledge of <i>the directors</i> of an <i>ICVC</i> or the <del><i>manager</i></del> <u><i>authorised fund manager</i></u> of an <i>AUT</i> or <i>ACS</i> , or which the <i>directors</i> or <del><i>manager</i></del> <u><i>authorised fund manager</i></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.		

...

## 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 fund 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 fund manager* of a *co-ownership scheme* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* or *authorised fund 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 fund 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 fund 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 fund 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 an *AUT* or *ACS* of any information he receives which may affect the accuracy of any entry in the *register*.

...

Issues and cancellations of units

8.5.10 R (1) Subject to (7), The the *authorised fund manager* must:

(a) ...

(b) ...

- (2) For the purposes of (1) the *authorised fund manager of an AUT or ICVC* may take into account *sales and redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager of an AUT, ACS or ICVC* must arrange for the *issue and cancellation of units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*.
- (4) The *authorised fund manager of an AUT, ACS or ICVC* must keep a record of *issues and cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the ~~trustee~~ *depository of an 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*.
- (6) Where the *authorised fund manager of an AUT, ACS or ICVC* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.
- (7) For the purpose of (1)(a), an authorised fund manager of an ACS must ensure that at each valuation point the number of units in issue of any class equals the number of units registered to unitholders for that class.

...

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

...

The following Notes explain certain words and phrases used in the table above.	
...	
Note 5	...
Note 6	<u>In the case of an ACS, units are only transferable in the following circumstances:</u>
	(1) <u>on the death of any joint holder to the surviving joint unitholder or unitholders; or</u>
	(2) <u>on the death of a holder (who was not a joint holder) to the deceased holder's executor or administrator; or</u>

	(3)	<u>to another <i>person</i> when required by insolvency law; or</u>
	(4)	<u>to a <i>body corporate</i> upon the merger or restructuring of the <i>holder</i>; or</u>
	(5)	<u>when the law otherwise requires their transfer.</u>

...

## 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 depositary*~~ of an *AUT*, *ACS* or a ~~*depositary*~~ 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 directors 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 depositary</i></del> <u><i>Depositary 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 *FSA* 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 261Z2 (Information for home state regulator) of the *Act* and regulation 29A (Information for home state

regulator) of the *OEIC Regulations* require the *FSA* to inform the *Home State regulator* of the *feeder UCITS* immediately.

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

...

## 11.4 Depositaries

...

Disclosure by a trustee or depositary

- 11.4.5 G Section 351A (Disclosure under the UCITS directive) of the *Act* provides that where a *trustee* of an *AUT* or the *depositary* 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 *depositaries* 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 261X(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 *FSA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised fund 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 *FSA* approves under section 252A or section 261Q (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 261X(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 *FSA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised fund 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 *FSA* approves under section 252A or section 261Q 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 FSA 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 *FSA* approves an application under sections 283A (Master-feeder structures), ~~or~~ 252A or 261Q (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 261Q(8) of the *Act* and regulation 22A(4) of the *OEIC Regulations* which require the *FSA* 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

...

- 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 *FSA*. These notification requirements, it should be noted, are in addition to the notifications which must be made to the *FSA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee), section 261O 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</i> 7.4.5R(5)	...			
<u><i>COLL</i> 7.4A.5R(5)</u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-ownership scheme (Authorised fund 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 261O of the Act or within 21 days of request under section 261U of the Act.</u>
<u><i>COLL</i> 7.4A.6R(6)</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</i> 7.4A.9R(7)</u>	<u>Winding up a solvent ACS or terminating a solvent sub-fund of a co-</u>	<u>Annual reports of authorised fund manager and</u>	<u>End of final accounting period</u>	<u>Four months</u>

	<u>ownership scheme</u>	<u>depository</u>		
...				

...

#### Schedule 4 Powers exercised

##### 4.1 G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>COLL</i> :	
...	
	Section 248 (Scheme particulars rules)
	<u>Section 261C (Applications for authorisation of contractual schemes)</u>
	<u>Section 261H (Contractual scheme rules)</u>
	<u>Section 261I (Contractual scheme particulars rules)</u>
	...

## Annex S

### Amendments to the Professional Firms sourcebook (PROF)

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

#### Schedule 6 Rules that can be waived

##### 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

## Annex T

## Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted 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 collective investment scheme 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> .
...	

...

## Schedule 6 Rules that can be waived

6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the FSA has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~

section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

...

## Annex U

## Amendments to the Prospectus Rules sourcebook (PR)

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

## Schedule 6 Rules that can be waived

## 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

...

## Annex V

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

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

(i) an authorised unit trust scheme; or

(ia) an authorised contractual scheme; or

...

...

...

...

## Schedule 6 Rules that can be waived

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) and regulation 2(3) of the *Contractual Scheme Regulations* the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules), ~~or~~ section 248 (Scheme particulars rules), section 261H (Contractual scheme rules) or section 261I (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.



## Annex W

## 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), 261S (Revocation of authorisation order otherwise than by consent), 261V (Directions) and 261W (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 FSA 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, 261S and 261V~~. However, the FSA will also consider the interests of past and potential *participants*.
- (5) Whether the FSA'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 FSA 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, 261S, 261V or 261W~~. In other instances, the FSA 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, 261S, 261V or 261W~~.
- (6) Whether there is information to suggest that a ~~trustee~~ depository or ~~manager~~ authorised fund manager has knowingly or recklessly given the FSA 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 FSA's attention promptly;
  - (b) the degree to which the ~~manager~~ authorised fund manager or ~~trustee~~ depository is willing to cooperate with the FSA'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 FSA 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 FSA may use its powers under sections 254, 257 and 258 (in the case of

AUTs) and sections 261S, 261V and 261W (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 FSA 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 261V (in the case of an ACS) in the first instance.
- 14.4 The following are examples of situations where the FSA may consider it appropriate to seek a court order under section 258 (in the case of an AUT) or section 261W (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 FSA false information.
- 14.5 The FSA 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 261S power (in the case of an ACS) to revoke an authorisation order, the FSA 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 FSA's power to disqualify auditors and *actuaries* if they breach them assist the FSA in pursuing its *regulatory objectives*. The FSA's power to disqualify auditors in breach of duties imposed by trust scheme rules or contractual scheme rules also ~~assist~~ assists the FSA to achieve these *regulatory 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 261J of the Act: the FSA'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 FSA has concerns about the fitness and propriety of an individual auditor or *actuary*, the FSA 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 261J**

- 15.7 When deciding whether or not to disqualify an auditor under section 249(1) or section 261J(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 FSA 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 FSA 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 FSA promptly, the degree of co-operation with the FSA 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 FSA 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 FSA 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 *ACSSs*. 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 FSA 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 FSA will adopt an approach which is broadly similar to that described in *EG* 14.2 to 14.5.

## Annex X

## 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 *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 fund 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</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 and 1B 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</i> (article 51(1)(b)); • <i>acting as the depositary of an authorised contractual scheme</i> (article 51(1)(bb)); ...
...

...

## 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

...

...

## **8.33 Introducing**

...

8.33.5 G In the *FSA*’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 FSA?**

... The property investment club itself would not be regulated by the FSA 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?**

...

**PUB REF: 002898**

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