

Consultation Paper

CP13/5[★]

Financial Services Authority

Quarterly consultation

(No. 35)

February 2013

Contents

Abbreviations used in this paper	3
1 Overview	5
2 Tracing employers' liability insurers: Employer's reference number	6
3 Proposed fees for primary information providers (PIPs)	11
4 Changes to the Training and Competence sourcebook (TC)	15
5 Supplementary consultation on proposed changes to the Collective Investment Schemes sourcebook by CP12/5	18
Appendix 1: List of questions	
Appendix 2: Draft Handbook text	
Appendix 2A: Designation of Handbook provisions	
Appendix 3: Draft Handbook text	
Appendix 3A: Designation of Handbook provisions	
Appendix 4: Draft Handbook text	
Appendix 5A: Draft Handbook text	
Appendix 5B: Draft amendments to the Collective Investment Scheme Information Guide (COLLG)	
Appendix 5C: Designation of Handbook provisions	

The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapters 3, 4 and 5 should reach us by 6 March 2013. Comments on Chapter 2 should reach us by 20 February 2013.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2013/cp13-05-response.shtml.

Alternatively, please send comments in writing to:

Chapter 2:	Ninderjit Mellett	Telephone: 020 7066 3086
Chapter 3:	David Cheesman	Telephone: 020 7066 5406
Chapter 4:	Amanda Ettridge	Telephone: 020 7066 5122
Chapter 5:	Stefanie Thorns	Telephone: 020 7066 1332

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

All responses should be sent to:

Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

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 e-mail message will not be regarded as a request for non-disclosure.

A confidential response maybe 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.

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

Abbreviations used in this paper

ACS	authorised contractual scheme
AFM	authorised fund manager
AUT	authorised unit trust
CBA	cost benefit analysis
COLL	Collective Investment Schemes sourcebook
COLLG	the Collective Investment Scheme Information Guide
CP	Consultation Paper
ELRs	employers' liability registers
ERN	employer's reference number
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
FUND	draft Investment Funds sourcebook of the FSA Handbook
HMRC	Her Majesty's Revenue and Customs
ICOBS	Insurance: Conduct of Business sourcebook
ICVC	investment company with variable capital
NURS	non-UCITS retail scheme
OEIC	open-ended investment company established under the OEIC Regulations
PAYE	Pay As You Earn

PIPs	primary information providers
QIS	qualified investor scheme
RIS	Regulated Information Service
SIPs	secondary information providers
TC	Training and Competence sourcebook
TP	Transitional Provision
UCITS	undertaking for collective investment in transferable securities

1

Overview

- 1.1 In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. We propose to:
- extend a transitional provision (TP) and guidance in the Insurance: Conduct of Business sourcebook (ICOBS) which requires insurers to include all UK commercial lines employers' liability policies, entered into or renewed on or after 1 April 2011, on employers' liability registers (ELRs) (Chapter 2);
 - introduce application and annual fees for primary information providers (PIPs) to cover the costs of regulating them (Chapter 3);
 - amend the appropriate qualifications list in the Training and Competence sourcebook (TC) to include three qualifications (Chapter 4); and
 - make further amendments to the Collective Investment Schemes sourcebook (COLL) following significant changes from HM Treasury to the features of the tax transparent fund regime since our previous consultation (Chapter 5).

2

Tracing employers' liability insurers: Employer's reference number

Introduction

- 2.1 In PS11/4¹, we introduced a policy to require insurers to include all UK commercial lines employers' liability policies, entered into or renewed on or after 1 April 2011, on employers' liability registers (ELRs). Our rules address the detriment to claimants who contract work-related illnesses many years after their employment when their employer no longer exists and they cannot locate an insurer to claim against.
- 2.2 This chapter proposes an extension to Insurance: Conduct of Business sourcebook (ICOBS) Transitional Provision (TP) 9AR and the guidance in ICOBS TP 9BG relating to ICOBS 8.4 for a further year.
- 2.3 This will be of interest to consumer groups, insurers and their intermediaries, those who are providing tracing services, employers and their employees.
- 2.4 The proposed amendments, if approved, will be made under section 137A [The Financial Conduct Authority's (FCA) general rules], section 137T (General supplementary powers), and section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 2.

1 PS11/4, *Tracing employers' liability insurers*, (February 2011).

Employer's reference number

- 2.5 The ELRs are populated with data including employer's name, address and policy number. We understand that this data may increase the chances of a consumer successfully tracing an employer's liability insurer in the future. Our rules also require firms to input the employer's reference number (ERN) on their ELRs. The ERN is given to every business that registers with Her Majesty's Revenue and Customs (HMRC) for Pay As You Earn (PAYE) purposes. Our requirement to include an ERN on the ELR was introduced in response to CP10/13.² We understand it received widespread support on the basis of its broad application, permanence and accessibility. Further, respondents told us it would significantly improve the effectiveness of searches for new policies and future renewals and claims.
- 2.6 Given that the collection of the ERN was new to the industry, we introduced TP 8R(1)(d) delaying the requirement to collect the ERN until 1 April 2012. However, we understand that firms were continuing to experience significant difficulty in collecting the ERNs. To address this, we introduced TP 9AR(1), so if a firm is unable to include information due to failure by a third party outside their control but they used best endeavours to collect, the firm will be deemed to comply with certain requirements around the ELR.³
- 2.7 TP 9AR(2) provides that the director certificate and auditor report should be compiled without reference to 'best endeavours'.⁴ This is because from a supervisory point of view we are interested in the actual level of inaccuracy or incompleteness of the register. The TP also provided some guidance on what 'best endeavours' means and the interplay between the two subsections of the TP.⁵ This TP expires on 1 April 2013.

Our proposal

- 2.8 We are aware of the continued efforts being made by firms and other parties to improve the collection rate of the ERN. However, our discussion with firms and other stakeholders indicate that firms are continuing to have practical difficulties in complying with the requirement particularly when they are relying on a third party to collect the data. We have been advised that employers are not providing the information, especially smaller employers and there appears to be uncertainty about why the information is necessary. There have been on-going campaigns from various organisations to improve the awareness of the ERN and what is it collected for. However firms are continuing to experience difficulties. Therefore, we propose to extend the existing TP whilst we explore other options which will take some time.
- 2.9 Our discussions with firms and other stakeholders indicated that one year would be necessary in order to fully explore other options. In our initial consultation on the TP and

2 CP10/13, *Tracing employers' liability insurers*, (June 2010).

3 In ICOBS 8.4.4R(2)(b)(ii) and the corresponding parts of ICOBS 8 Annex 1.

4 For the purposes of ICOBS 8.4.4R(1)(b) and (1)(c), a firm must treat references to compliance with ICOBS 8.4.4R(1)(a), ICOBS 8.4.4R(2) and ICOBS 8 Annex 1 (director's certificate and auditor report requirements) as if TP 9AR subsection 1 did not apply.

5 TP 9BG.

related guidance⁶, several respondents were of the view that one year was not long enough. We propose extending this TP and related guidance for a further year, until 1 April 2014.

- 2.10** We remind firms that this TP can only be relied on where the collection of information is through a third party and outside their control. Where firms are responsible for the collection of the data we expect them to comply fully with our requirements. We consider this TP supports our overall objective that ERN's must be collected; firms will have to meet the high threshold of 'best endeavours' in order to rely on the TP.
- 2.11** As this TP and related guidance has already been consulted on and received widespread support, consultation will be for two weeks. We welcome comments on our proposals no later than 20 February 2013. We intend to publish our final rules, if approved, in March 2013, for implementation on 1 April 2013.

Q2.1: Do you agree with our proposal to extend TP 9AR(1), TP 9AR(2) and TP 9BG for one year until 1 April 2014?

- 2.12** We will continue to work with interested stakeholders regarding the collection of the ERN and the Financial Conduct Authority (FCA), who from 1 April 2012 will be responsible for regulation of conduct in retail, as well as wholesale, financial markets, will make an appropriate decision on the provision as necessary before the TP expires.
- 2.13** The existing TP will expire 1 April 2013.

Cost benefit analysis

- 2.14** The proposals set out in this CP will be made by the Board of the Financial Conduct Authority (FCA), rather than by the FSA. As a result, the relevant cost-benefit analysis (CBA) requirements are those set out in sections 138I and 138J of the revised version of FSMA rather than those in section 155 of the original version of FSMA.
- 2.15** The FCA will be required to carry out and publish a CBA when proposing draft rules and when making rules which are significantly different from the draft consulted on. In particular, they will be required to publish an analysis of the costs together with an analysis of the benefits and an estimate of those costs and of those benefits.
- 2.16** However, if the FCA believes that these costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, an estimate need not be provided. In this case the FCA must explain why it is of that opinion. Finally, no CBA is required if the FCA considers that there will be no increase in costs or there will be a cost increase of minimal significance.

⁶ CP10/13, *Quarterly consultation (No 31)*, (December 2011).

- 2.17 We considered the costs associated with the collection of the ERN as part of the original cost benefit analysis carried out in CP10/13.⁷ Our proposals will delay the point at which firms will be required to collect ERNs and, therefore, will not impose additional costs on firms. While in some instance this means that the benefits of ERN collection will be delayed, in most instances we believe that where firms are able to collect ERNs they will continue to do so. It is not possible to meaningfully quantify these delayed benefits as we cannot predict the reduction in the recording of ERN as a result of the extension of the TP, but we believe it will be small. So we consider that the CBA set out below meets the draft revised FSMA CBA requirements.

Compatibility statement

- 2.18 The final changes will be made by the Board of the FCA rather than by the FSA. We are therefore commenting on the compatibility of our proposals with: our general duties under section 2 of the Financial Services and Markets Act (FSMA); the principles of good regulation – as set out in section 2 of FSMA; and the statutory and regulatory objectives of the FCA – as proposed by the Financial Services Act 2012. The requirement for a compatibility statement is set out in section 155(2)(c) of FSMA.
- 2.19 In PS11/4, our rules advanced our objective of consumer protection by ensuring that claimants can trace their employer's insurer. While the proposed TP delays the full consumer protection benefits arising from our rules as set out in PS11/4, the aim of our rules to advance consumer protection remains the same.
- 2.20 The FCA must, so far as is compatible with acting in a way which advances its consumer protection objective or integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers. The proposals set out here will not actively promote competition with regard to employers' liability insurance, but we think the effect on competition will be neutral.
- 2.21 Under section 2(3) of FSMA we are required to have regard to the principles of good regulation. We are satisfied that these proposals are compatible with our principles particularly those of proportionality. Proportionality of regulatory requirements has been observed by recognising the practical difficulties of collecting the ERN and extending the relevant TP and related guidance.

Equality and diversity issues

- 2.22 We have assessed the likely equality and diversity impacts of the proposals and do not think that the proposals give rise to any concerns. However, any comments from respondents would be welcome.

⁷ CP10/13, *Tracing employers' liability insurers*, (June 1010).

Contact

Comments should reach us by 20 February 2013. Please send them to:

Ninderjit Mellett
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7066 3086
Email: cp13_05@fsa.gov.uk

3

Proposed fees for primary information providers (PIPs)

Introduction

- 3.1 In this chapter we propose application and annual fees for primary information providers (PIPs), to recover the costs of operating the new regulatory regime which will be introduced when the Financial Conduct Authority (FCA) is established under the Financial Services Act 2012. We consulted on the new regime for PIPs in Chapter 4 of CP12/37.⁸
- 3.2 This will be of interest to primary information providers and persons or companies who use their services.
- 3.3 The proposed amendments, if approved, will be made under section 73A (Part 6 Rules), section 89P (Primary Information Providers), section 137A (The FCA's general rules), section 137T (General supplementary powers), and paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) of the Financial Services and Markets Act 2000. The text of the proposed amendments can be found in Appendix 3.

New regulatory regime for PIPs

- 3.4 PIPs receive regulated information from listed companies (and other entities) and disseminate it onward to a broader range of newswire outlets known as secondary information providers (SIPs). Examples of PIPs include PR Newswire, News Release Express and RNS. SIPs onward distribute the regulated information again. Examples of SIPs include AFX News, Bloomberg, and Reuters.

⁸ CP12/37, *The Financial Services Bill: implementing market powers, decision-making procedures, and penalties policies*, (December 2013).

- 3.5 The regulated information distributed by PIPs generally consists of announcements/disclosures that listed companies and other entities are required to make under the UK Listing Authority's rules. Examples include the publication of annual financial reports or announcements regarding significant upcoming transactions. As the information is often price sensitive, PIPs play an important role within a regulated market of distributing information in a timely and secure fashion.
- 3.6 Once a PIP is approved by the FCA it will be referred to as a Regulated Information Service (RIS). A list of all RISs will be maintained by the FCA.

Proposed fees for PIPs

- 3.7 We will charge PIPs fees to cover the costs of regulating them. Like the FSA, the FCA will not receive any monies from government so will be funded entirely by the firms it regulates. We recover the money we need to operate through application fees when firms apply to be authorised to carry out regulated activities, and annual periodic fees which cover the costs of supervision.
- 3.8 Each October, we consult on policy proposals for our fees and levies, and we consult on the fee-rates each March. PIPs should, in the future, review these publications, which are available on our website, since they may contain proposals which affect them.

Application fee

- 3.9 We will charge PIPs our standard fee for straightforward applications, which is currently £1,500. This will go towards the cost of reviewing and, where necessary, clarifying any material supplied on application. This may involve reviewing the audit reports received and discussing any matters of concern identified.

Annual fee

- 3.10 We will recover the ongoing costs of monitoring compliance with the new regime through annual fees. These will cover the costs of supervising the activities of PIPs, assessing and responding to any concerns identified, and where necessary considering and implementing disciplinary action. We are proposing an annual fee of £15,000 per PIP to cover our regulatory costs.
- 3.11 We will keep the fees under review against the resources required to operate the supervisory regime. We will revisit and if necessary consult upon amendments to the fee structure in the future if circumstances change.

Q3.1: Do you have any comments on the proposed fee structure for PIPs?

Cost benefit analysis

- 3.12 Section 155(9) of FSMA exempts us from having to carry out a cost benefit analysis on our policy proposals for fees.

Compatibility statement

- 3.13 We believe the final changes in this CP will be made by the Board of the FCA, rather than by the FSA. So we comment here on the compatibility of our proposals with the draft duties and objectives of the FCA as set out in the FSMA as amended by the Financial Services Act 2012.
- 3.14 Section 138I(2)(d) of FSMA (as amended by the Financial Services Bill) requires that a consultation undertaken by the FCA includes an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties.
- 3.15 We believe our current proposals are compatible with our general duties contained in section 1B(5)(a) of FSMA and our regulatory objectives referred to in section 1B(5)(a) of FSMA. They are intended to recover the costs of introducing and delivering the new regulatory regime on PIPs on which we consulted last December. The compatibility statement relating to those proposals is contained in CP12/37. As we have stated in previous consultations on fees, our fee-raising arrangements support our statutory objectives by providing the resources that enable us to meet them. They are not intended in themselves to act as vehicles to achieve our objectives or to influence behaviour. Since the regulation of PIPs is a new responsibility, we have based our fees on our best estimate of the cost of delivery. If in the future practical experience of the regime leads us to revise our estimates of the costs required, we will consult on any amendments to the fees structure that may be necessary.

Competition duty

- 3.16 The FCA must, so far as is compatible with its objectives, discharge its general functions (including rule-making, guidance and general policies) in a way which promotes competition (section 1B(4) of FSMA). We have had regard to this duty and believe that the fees rules we have proposed balance the requirement for a regime that helps assure a high level of investor protection while remaining compatible with the FCA's proposed duty. We believe that the fees proposed are proportionate and we have ensured that they only cover the costs necessary to perform our supervisory function.

Equality and diversity

- 3.17 We believe that our proposals do not have any implications for equality or diversity, but if you think any equality issues might arise, we would welcome comments.

Contact

Comments should reach us by 6 March 2013. Please send them to:

David Cheesman
Finance and Operations Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7066 5406
Email: cp13_05@fsa.gov.uk

4

Changes to the Training and Competence sourcebook (TC)

Introduction

- 4.1 We are proposing amendments to Training and Competence sourcebook (TC), which sets out the qualification requirements for individuals carrying out certain retail activities. We previously said that we would consult for one month each time a new qualification was added, removed or other changes were made to the list of appropriate qualifications.
- 4.2 This chapter proposes to add three qualifications to the appropriate qualifications list in TC.
- 4.3 This chapter will be of interest to firms and individuals who are subject to TC requirements.
- 4.4 The proposed amendments, if approved, will be made under section 137A (The FCA's general rules), section 137T (General supplementary powers); and section 138C (Evidential provisions) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 4.

New qualifications

- 4.5 We propose to add the following new qualifications to the appropriate qualifications lists for various TC activities.⁹ These qualifications have been assessed as meeting our exam standards for these TC activities:

⁹ TC activity 2 (Advising on Securities which are not stakeholder pension schemes, personal pensions or broker funds); TC activity 3 (Advising on Derivatives); TC Activity 8 (Advising on investments in the course of corporate finance activity); TC activity 10 (Undertaking the activity of a broker fund adviser); TC activity 12 (Advising on and dealing in Securities which are not stakeholder pensions, personal pensions or broker funds); TC activity 13 (Advising on and dealing in Derivatives); and TC activity 14 (Managing investments).

- MSC in Investment Management (pre 2003 syllabus) from the CASS Business School provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation to be added to TC activities 2, 3, 12 and 13;
- Diploma in Corporate Finance from the Chartered Institute for Securities and Investment (CISI) to be added to TC activity 8; and
- Diploma in Financial Planning (to include a pass in module J12 ('Securities advice and dealing') from the Chartered Insurance Institute to be added to TC activities 10 and 14.

Q4.1: Do you know of any reason why these qualifications should not be added to our appropriate qualifications list?

Cost benefit analysis

- 4.6** Section 138I(2) of FSMA (to be amended by the Financial Services Act 2012) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance. This proposal does not incur any costs as it simply updates the list of 'appropriate qualifications'.

Compatibility statement

- 4.7** Any rules made following consultation will be made by the FCA rather than the FSA, so this section contains an explanation of why we believe that the proposals are compatible with the general duties that the FCA will have, as set out in the Financial Services Act 2012, which we expect to come into force on 1 April 2013.
- 4.8** Section 1B of FSMA (to be amended by the Financial Services Act 2012) will require the FCA, when discharging its general functions, so far as is reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA will also need to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 4.9** These proposals are intended to help ensure that the relevant markets function well, and to help secure an appropriate level of protection for consumers. In particular, they build on the consumer protection provided by the existing TC rules while updating them to take into account the development of new qualifications. So we are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B (to be amended by the Financial Services Act 2012).

Equality and diversity

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

Contact

Comments should reach us by 6 March 2013. Please send them to:

Amanda Ettridge
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7066 5122
Email: cp13_05@fsa.gov.uk

5

Supplementary consultation on proposed changes to the Collective Investment Schemes sourcebook by CP12/5

Introduction

- 5.1 The purpose of this supplementary consultation is to seek comments on further amendments to the Collective Investment Schemes sourcebook (COLL), following substantial changes from HM Treasury (the Treasury) to the features of the tax transparent funds regime since our earlier consultation.
- 5.2 In Chapter 8 of CP12/5¹⁰, we proposed amendments to COLL and other parts of the FSA Handbook to enable us to authorise another two legal forms of collective investment scheme (in addition to authorised unit trusts and open-ended investment companies): co-ownership schemes and limited partnership schemes.
- 5.3 The Treasury consulted separately on a statutory instrument (the Regulations) to make the necessary changes to the Financial Services and Markets Act 2000 (FSMA) and other legislation. That consultation¹¹ closed in March 2012. In addition to the original

¹⁰ CP12/5: *Quarterly consultation* (No. 32), March 2012.

¹¹ HM Treasury, Consultation on contractual schemes for collective investment, (January 2012) www.hm-treasury.gov.uk/d/consult_contractual_schemes090112.pdf

consultation, the Treasury published a revised draft of the Regulations for further consideration and comments in July 2012.¹²

- 5.4** As outlined in Chapter 8 of CP12/5, our proposed Handbook changes were based on the original published draft of the Regulations. We pointed out that if the text of the final Regulations differed significantly from that the Treasury consulted on, we would need to review, and possibly alter, our own proposed amendments accordingly.
- 5.5** The Treasury has now amended its proposals in a number of areas and introduced some significant policy changes.¹³ Some of these changes require us to modify the amendments to COLL we proposed in Chapter 8 of CP12/5, so we are now seeking comments on further amendments to our Handbook text. We will issue a detailed feedback statement, addressing the concerns and comments received to CP12/5, as well as to this supplementary consultation.
- 5.6** To assist the readers' understanding of the matter these amendments do not solely relate to the FSA Handbook, but also to the Collective Investment Scheme Information Guide (COLLG). Our new changes have been drafted on the basis of both the Handbook text we proposed in CP12/5 and the changes to FSMA and other legislation to be made by the Treasury.¹⁴ So, this consultation needs to be read in the context of the policy considerations outlined by CP12/5 and the changes made by the Treasury.
- 5.7** The proposed amendments to the Handbook, if approved, will be made under section 137A (The FCA's general rules), section 137B(3) (FCA general rules: clients' money right to rescind etc.), section 137T (General supplementary powers), section 139A (Power of the FCA to give guidance), section 247 (Trust scheme rules), section 248 (Scheme particulars rules), section 261C (Applications for authorisation of contractual schemes), section 261I (Contractual scheme rules), section 261J (Contractual scheme particulars rules) of FSMA; regulation 6 (1)(FCA rules) of the Open-Ended Investment Companies Regulations 2001 (OEIC Regulations) (SI 2001/1228) and the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook. The text of the proposed amendments to COLL can be found in Appendix 5A, those relating to COLLG in Appendix 5B.
- 5.8** In CP12/32¹⁵, we outlined how we intend to replace COLL with a new Handbook module, to be known as the Investment Funds sourcebook (FUND). When consulting further on the text of FUND, we will not re-consult on the subject matter of CP12/5 or this present consultation. The final form of the text in Appendix 5A of this paper will be incorporated in FUND with any necessary changes to fit the structure of that sourcebook, but will not differ in substance from what is eventually implemented in COLL.

12 HM Treasury, Revised regulations for contractual schemes for collective investment, (July 2012) www.hm-treasury.gov.uk/d/draft_si_collective_investment_transferable_ecurities_contractual_scheme_regs2012.pdf

13 HM Treasury: www.hm-treasury.gov.uk/d/draft_si_collective_investment_transferable_securities_contractual_scheme_regs2013_updated.pdf

14 HM Treasury: www.hm-treasury.gov.uk/d/draft_si_collective_investment_transferable_securities_contractual_scheme_regs2013_updated.pdf.

15 CP12/32, *Implementation of the Alternative Investment Fund Managers Directive*, (November 2012).

- 5.9 We would like to highlight that the Treasury has not yet laid the Regulations before Parliament, so they may be subject to further change which could affect our proposed Handbook rules. Please note that we may share our responses with the Treasury.

Authorised contractual schemes (ACS) – Supplementary consultation

Overview of the proposed ACS regime in CP 12/5

- 5.10 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 proposes to introduce two new, regulated, tax-transparent fund vehicles: co-ownership schemes and limited partnership schemes. Collectively, we refer to them as ‘authorised contractual schemes’ or ‘ACSs’.
- 5.11 As explained in CP12/5, the Treasury’s Regulations set out the main aspects of the legal structure of co-ownership and limited partnership schemes. In a co-ownership scheme, the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants). The scheme has no legal personality distinct from the persons who invest in them. Its 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).
- 5.12 The general approach proposed in CP12/5 was to apply COLL in its entirety to ACSs. Practically, we said we would treat ACS in the majority of cases in the same way as AUTs, given the similarities in the nature of their investor protection features required and that both types of scheme have no separate legal personality. Differences in treatment between AUTs and ACSs related to the transfer of units, box management by the authorised fund manager, and winding up of the schemes. Further, to take account of the Treasury’s proposal that the Financial Conduct Authority (FCA), the successor to the FSA, will not be able to authorise limited partnership schemes using an ‘umbrella’ structure, we proposed corresponding provisions to reflect this distinct feature.

ACSs: supplementary amendments to COLL

- 5.13 For the purpose of this re-consultation, we identify and explain only those areas where the Treasury’s amendments have caused us to change our original policy intention as expressed in CP12/5. However, we would like to point out that the new instrument also contains some changes just to improve drafting. These changes generally give greater clarity, are either based on feedback received or relate to the Treasury’s changes. These do not, and are not intended to, depart from our original policy intention.

The 'nominated partner'

- 5.14 Originally, the Treasury proposed that, on formation of a limited partnership scheme, the proposed depositary was to be the first limited partner. This suggestion has been reconsidered and the Treasury is now proposing that a 'nominated partner' replaces the depositary as the first limited partner. The nominated partner's only role will be to enter into the contractual scheme deed with the operator. It will not be conducting regulated activity and so will not require FCA authorisation. On this basis we are introducing a new Glossary definition of 'nominated partner' and make consequential changes to the definition of an 'affected person', a 'contractual scheme deed' and changes throughout COLL.

Q5.1: Do you agree with our proposals relating to the 'nominated partner' in a limited partnership scheme?

Investor eligibility criteria

- 5.15 The Treasury has introduced legislation to ensure that in case of the ACS's insolvency, investors' liability is limited to the extent of the scheme property. Nevertheless, there remains a fractional risk that foreign courts might not recognise UK legislation that limits liability of participants in a tax transparent fund. The Treasury's legislation addresses this risk by requiring units in an ACS to only be issued to either a professional or a large investor or an existing ACS investor.
- 5.16 On this basis we are consulting on introducing two new Glossary definitions, reflecting how they are proposed to be defined in section 261E of FSMA. The first one is 'large ACS investor', which we define as 'a person who in exchange for units in the scheme (a) makes a payment of not less than £1,000,000; or (b) contributes property with a value of not less than £1,000,000'. The second new Glossary term defines a 'professional ACS investor' as 'a person who falls within one of the categories (1) to (4) of section I of Annex II (professional clients for the purpose of that directive) to MiFID'.
- 5.17 Limiting the types of participants in an ACS constitutes an important investor protection feature. Consequently, we propose that any type of ACS, whether it is set up as an undertaking for collective investment in transferable securities (UCITS), a non-UCITS retail scheme (NURS) or a qualified investor scheme (QIS), states in its constituting instrument and prospectus that units may not be issued to a person other than a professional or large ACS investor.
- 5.18 Additionally, we have inserted a new provision in COLL 6.6.3AR. The authorised fund manager (AFM) of an ACS which is a UCITS or NURS will be obliged to take reasonable care to ensure that ownership of units in the scheme is only recorded in the register for a professional, a large or an existing ACS investor. Since beneficial ownership will also be in the scope of our provisions, the same duty of reasonable care will apply to the AFM if units of an ACS are distributed through or from an intermediate unitholder (COLL 6.6.3AR(2)).

- 5.19** COLL 8.1.4G defines QIS as a type of authorised fund that may only be sold to sophisticated investors. Currently, the AFM of an AUT or an ICVC must take reasonable care to ensure that subscription of units in a QIS should only be in relation to the client types set out in COLL 8 Annex 1R. Given that we have no intention of changing these criteria, we are proposing to apply the new ACS investor eligibility criteria in addition to the existing ones (COLL 8.1.3R(3)). Again, the same level of care will apply to the AFM of a QIS if it distributes units of an ACS through an intermediate unitholder (COLL 8.5.10DR).
- 5.20** The insertion of the proposed new Glossary definition of ‘intermediate unitholder’¹⁶ has been postponed until 31 December 2013.¹⁷ As explained above, we believe that the Treasury’s proposed investor eligibility criteria should not only apply to the legal ownership of units but also to the beneficial ownership of units. Therefore, we are now consulting on introducing the new terms ‘intermediate unitholder’ and ‘intermediate unitholder in a qualified investor scheme’. The two definitions are in line with that proposed by the Platforms Instrument¹⁸ and enable us to effect our policy proposal in COLL 6.6.3AR(2) and COLL 8.5.10DR.
- 5.21** Units which are vested in anyone other than a person, who qualifies as either a professional or large ACS investor, have to be redeemed by the AFM as soon as practicable (COLL 6.6.3BR and COLL 8.5.10ER). These provisions apply to the AFM of an ACS irrespective of the type of scheme it is managing (ie UCITS, NURS or QIS).

Q5.2: Do you agree with our proposals regarding investor eligibility criteria in an ACS?

Transferability of units

- 5.22** The Treasury’s original consultation proposed that the transfer of units would be prohibited except where permitted by FSA rules. This potential blanket restriction on transfer of units has been dropped. It is now proposed that the contractual scheme deed must either prohibit the transfer of units, or allows transfer only if specified conditions are met. Transfer of units of an ACS from one person to another will be subject to the same investor eligibility criteria as the original subscription of units.
- 5.23** To give effect to the above policy proposal, we are consulting on requiring detailed disclosure in the instrument and prospectus of an ACS (COLL 3.2.6R(27G), COLL 4.2.5R(5B), COLL 8.2.6R(2)(6)(a)(vii) and COLL 8.3.4R(5B)). Secondly, we are proposing to amend COLL 6.4.6AR and to introduce a new provision for QIS in COLL 8.5.10BR, to require the AFM to take reasonable care to ensure that units are only transferred to persons satisfying the investor eligibility criteria.

¹⁶ Retail Distribution Review (Platforms) Instrument 2011 (FSA 2011/47).

¹⁷ Retail Distribution Review (Platforms) (Amendment) Instrument 2012 (FSA 2012/43).

¹⁸ Retail Distribution Review (Platforms) Instrument 2011 (FSA 2011/47).

- 5.24** We recognise that some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder) so are out of the AFM's control. That is why we are consulting on imposing a duty of 'reasonable care' and not a strict liability. As already explained, where transfer of units has taken place to an ineligible investor, the AFM will be required to redeem the units as soon as practicable after becoming aware that they have become vested in anyone not meeting the eligibility criteria (COLL 6.6.3BR and COLL 8.5.10ER).
- 5.25** Free transferability of units constitutes a prerequisite for the issue of bearer certificates. As explained above, transfer of units is subject to certain investor eligibility criteria so, in our view, the issue of bearer certificates by the AFM of an ACS would be incompatible with that principle. Since COLL 6.4.7R(3) provides that bearer certificates may only be issued if they are permitted by the instrument constituting the scheme we will limit the scope of COLL 3.2.6R(15) to ICVCs and AUTs.
- 5.26** Equally, the AFM of an ACS will not be able to trade and list these schemes on an investment exchange. As proposed by CP12/5, ACSs should not be included within the scope of COLL 6.2.16R(10). For the avoidance of doubt, we have now clarified that this provision only applies to AFMs of AUTs or ICVCs.

Q5.3: Do you agree with our amendments regarding transfer of units in an ACS?

Box management

- 5.27** Based on the Treasury's restrictions on the transfer of units, we proposed in CP12/5 to prohibit the AFM from operating a 'box'. As set out above, the Treasury has made a substantial policy change in this area. We propose not to proceed with the restrictions that would have stopped the AFM of an ACS from operating a box. Consequently, our proposal will enable the AFM of an ACS to hold unregistered units for its own account and trade them, buying from one investor and selling to another.
- 5.28** One exception still applies – it will not be possible for the operator of a limited partnership scheme (who will be the scheme's general partner) to become a registered unitholder. Section 3 of the Limited Partnership Act 1907 provides that a general partner cannot be an investor (limited partner) at the same time. Therefore, the AFM of a limited partnership scheme will not be entitled to any rights or interests in the scheme (such as income and voting rights). We have made corresponding amendments to COLL 6.2.2G(2) and COLL 6.4.5R(3).
- 5.29** To give effect to this policy change, we intend to drop the previously proposed changes in COLL 6.2.2G(2) and (4), COLL 6.2.8R and COLL 6.2.11R. Given that we did not extend the scope of COLL 6.2.8R(1) and (3), COLL 6.4.5R and COLL 6.5.9R to AFMs of ACSs, we are now consulting on applying these provisions to all types of AFMs (subject to the exception for limited partnership schemes outlined above). Please note that we have made similar changes to the provisions originally consulted on for AFMs of QIS in COLL 8.5.10R.

Q5.4: Do you agree with our policy change to permit the AFM of an ACS to operate a box?

Minor changes

- 5.30** Section 6(1) of the Limited Partnership Act 1907 provides that if a limited partner takes part in the management of the partnership business, he is liable for all debts and obligations of the firm incurred while he takes part in the management as though he were a general partner. For the avoidance of doubt, the Treasury has clarified in its proposed modifications of the Limited Partnership Act 1907 that ‘the exercise of rights conferred on limited partners by rules made under section 261I of FSMA does not constitute taking part in the management of the partnership business’. Based on the Treasury’s modification, we have amended the proposed disclosure requirements for a limited partnership scheme in its constituting instrument and prospectus.
- 5.31** The Treasury’s new proposal contains a number of additional matters to be disclosed in the instrument by the ACS. For instance, these are reflected in COLL 3.2.6R(27H) and COLL 3.2.6R(27L). Please note that we have made some further changes in relation to disclosure in the scheme’s instrument. However, these relate solely to improved clarity and do not constitute any policy change (eg COLL 3.2.6R(27I) and COLL 3.2.6R(27J)).
- 5.32** Equally, we are proposing amendments to COLL for the purpose of improved drafting. Examples can be found in COLL 3.2.6R(27C), COLL 4.2.5R(2A) and COLL 8.2.6R(2)(6)(b).

Q5.5: Do you agree with these minor amendments to COLL?

Q5.6: Do you have any other comments on our proposed amendments to COLL?

Timeline

- 5.33** The consultation period closes on 6 March 2013. This short consultation period will enable us to finalise our Handbook text so that our rules and guidance come into force shortly after the Regulations. We believe that none of the proposed amendments will come as a surprise to stakeholders, given that the Treasury has been actively engaging with them throughout the development of the Regulations.

Cost benefit analysis

- 5.34** Section 138I(2) of FSMA (to be amended by the Financial Services Act 2012) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the

results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance.

- 5.35** As set out in CP12/5, these rules introduce a regime for ACSs 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, economic agents will rationally set up an ACS if doing so is more beneficial than using an AUT or OEIC structure. So, any costs incurred in the process are incurred on a voluntary basis and are smaller than the costs that would be incurred if the ACS schemes did not exist.
- 5.36** CP12/5 contained an analysis of the costs and benefits of the introduction of the regime for ACS. This consultation contains a number of updates to those rules, the majority of which are clarificatory and hence do not give rise to costs of more than minimal significance. However, there are two exceptions to this: the introduction on investor eligibility criteria and the transfer of units of an ACS.
- 5.37** The introduction of investor eligibility criteria may have a cost impact on operators of ACS purely arising from the administrative costs associated with confirming that prospective clients fall into these categories.
- 5.38** Benefits will arise from this restriction both for operators of ACS, who will be able to ensure that only investors with appropriate knowledge and/or financial resources are invested in these types of schemes, and for customers, by ensuring that there is no possibility for them to invest in such schemes which may not be suitable for retail investors.
- 5.39** Some transfers of units arise by operation of law (such as upon death or bankruptcy of the unitholder). So, COLL 6.6.3BR and COLL 8.5.10ER require the AFM of an ACS to redeem units (as soon as practicable) which are vested in anyone other than a person who qualifies as a professional or large ACS investor. This may result in some increased costs for ACS operators, as a result of having to redeem units that otherwise would be transferred to other beneficiaries.
- 5.40** However, the benefits of these provisions are that they ensure that any transfers that are outside the authorised fund manager's control do not lead to potential regulatory breaches as a result of the units passing to a person who is not eligible to hold them. Customers also benefit by being assured that investments held in an ACS can be redeemed in the event of an operation of law, such as in those circumstances described above.

Compatibility statement

- 5.41** As we stated in CP12/5, our proposals contribute to securing an appropriate framework for investors and achieve our statutory objectives of consumer protection and market confidence within the legal regime set out by the Treasury. Our proposed amendments and clarifications in this CP ensure that those objectives are still achieved in light of changes to that regime.

Equality and diversity issues

5.42 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.

Q5.7: Do you have any comments on the CBA, compatibility statement or equality and diversity issues?

Contact

Comments should reach us by 6 March 2013. Please send them to:

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

Telephone: 020 7066 1332
Email: cp13_05@fsa.gov.uk

Appendix 1

List of questions

Chapter 2:

- Q2.1:** Do you agree with our proposal to extend TP 9AR(1), TP 9AR(2) and TP 9BG for one year until 1 April 2014?

Chapter 3:

- Q3.1:** Do you have any comments on the proposed fee structure for PIPs?

Chapter 4:

- Q4.1:** Do you know of any reason why these qualifications should not be added to our appropriate qualifications list?

Chapter 5:

- Q5.1:** Do you agree with our proposals relating to the 'nominated partner' in a limited partnership scheme?
- Q5.2:** Do you agree with our proposals regarding investor eligibility criteria in an ACS?
- Q5.3:** Do you agree with our amendments regarding transfer of units in an ACS?

Q5.4: Do you agree with our policy change to permit the AFM of an ACS to operate a box?

Q5.5: Do you agree with these minor amendments to COLL?

Q5.6: Do you have any other comments on our proposed amendments to COLL?

Q5.7: Do you have any comments on the CBA, compatibility statement or equality and diversity issues?

Appendix 2

Draft Handbook text

**EMPLOYERS' LIABILITY INSURANCE: DISCLOSURE BY INSURERS (NO 3)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA's general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

TP 1 Transitional Provisions

...			
9A	R	(1)	For the purposes of <i>ICOBS</i> 8.4.4R(1)(a), to the extent that a <i>firm</i> is unable to include information required under <i>ICOBS</i> 8.4.4R(2)(b)(ii) solely because of a failure by a third party outside the <i>firm's</i> control, then provided that the <i>firm</i> has used, and continues to use, best endeavours to obtain that information, other than refusing to provide cover to an employer solely because it has not provided the information requested, the <i>firm</i> will be deemed to comply with the requirements in <i>ICOBS</i> 8.4.4R(2)(b)(ii) and the corresponding parts of <i>ICOBS</i> 8 Annex 1.
		(2)	For the purposes of <i>ICOBS</i> 8.4.4R(1)(b) and (1)(c), a <i>firm</i> must treat references to compliance with <i>ICOBS</i> 8.4.4R(1)(a), <i>ICOBS</i> 8.4.4R(2) and <i>ICOBS</i> 8 Annex 1 as if TP 9AR did not apply.
9B	G		The effect of TP 9AR(1) is that a <i>firm</i> will not be in breach of the requirements to include relevant information on its register to the extent that it is unable to obtain that information from third parties over which it does not exercise control. However, in order to be able to rely on this provision the <i>firm</i> will need to be able to demonstrate that it has used its best endeavours to obtain the information from the third party over the relevant time period and continues to do so, other than by refusing to provide cover to that employer solely for failure to provide relevant information. The effect of TP 9AR(2) is that even though the <i>firm</i> may not be regarded as being in breach of the underlying requirements in <i>ICOBS</i> 8.4.4R(1)(a), the <i>director's certificate</i> and report prepared by an auditor will need to be addressed at the level of compliance of the register as if TP 9AR(1) did not provide any transitional relief from the <i>firm</i> being in breach.
			TP 9AR(1) and (2) and 9BG apply until 1 April 2013 <u>2014</u> .

Appendix 2A

Designation of Handbook provisions

1. FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.
2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
ICOB5 9AR	FCA
ICOB5 9BG	FCA

¹ www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 3

Draft Handbook text

FEES (MISCELLANEOUS AMENDMENTS) (NO 6) INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 73A (Part 6 Rules);
 - (2) section 89P (Primary Information Providers);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers); and
 - (5) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) of the Act.
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Miscellaneous Amendments) (No 6) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[date]

Annex

Amendments to the Fees manual (FEES)

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

3.2 Obligation to pay fees

...

3.2.7 R Table of application and vetting fees

[FCA/
PRA]

(1) Fee payer	(2) Fee payable	Due date
...		
<u>(zp) An applicant for approval as a primary information provider</u>	<u>1,500</u>	<u>On or before the application for approval is made</u>

[Editor's Note: Primary information provider is defined as a person approved by the FCA under section 89P of the Act in Annex A to the draft instrument attached to Appendix 3 to CP 12/37 – The Financial Services Bill: Implementing market powers, decision making procedures and penalties policies.]

...

4.2 Obligation to pay periodic fees

...

4.2.11 R Table of periodic fees

[FCA/
PRA]

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
All non-listed issuers (in DTR) of shares, depositary receipts and securitised derivatives	<i>FEES 4 Annex 8R, <u>except for Table 3</u></i>	Within 30 days of the date of the invoice	Non-listed issuer (in DTR) becomes subject to disclosure rules and transparency rules

<u>Any primary information provider</u>	<u>FEES 4 Annex 8R, Table 3</u>	<u>Within 30 days of the date of the invoice</u>	<u>A person is approved as a primary information provider</u>
...			

...

4 Annex 8R Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April 2012 to 31 March 2013

[FCA]

...

<u>Table 3 – Primary information providers</u>
<u>15,000</u>

[Editor's Note: the reference to 1 April 2012 to 31 March 2013 in the heading to FEES 4 Annex 8 is intended to be changed to 1 April 2013 to 31 March 2014 in the draft instrument attached to Appendix 1 to CP12/28 – Regulatory fees and levies: policy proposals for 2013/14.]

Appendix 3A

Designation of Handbook provisions

1. FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.
2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
FEES 3.2.7R	FCA and PRA
FEES 4.2.11R	FCA and PRA
FEES 4 Annex 8R	FCA and PRA

¹ www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 4

Draft Handbook text

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 8) INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 138C (Evidential provisions).
- B. The rule-making powers listed above are specified for the purpose of section 138G (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 8) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 4E Appropriate Qualification tables

[FCA]

Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
...
CASS Business School	MSC in Banking and International Finance (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 3, 12, 13	a
	<u>MSC in Investment Management pre 2003 syllabus (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation)</u>	<u>2, 3, 12, 13</u>	<u>b</u>
...
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)
	Diploma (where candidate holds 3 modules as recommended by the firm) <u>Diploma in Corporate Finance</u>	14 and 10 <u>8</u>	1 <u>1</u>
...
Chartered Insurance Institute	...	4 and 6	b
	...		
	...		
	...		
	...		
	Associate (ALIA Dip)	<u>14 and 10</u>	<u>1</u>
<u>Diploma in Financial Planning which includes a pass in J12 from the Certificate in Securities advice and dealing</u>			
...

Appendix 5A

Draft Handbook text

Editor's note: This draft instrument builds upon the text proposed by Chapter 8 of (and Appendix 8 to) CP12/5 *Quarterly consultation (No 32)* (March 2012) ("CP12/5") for Authorised Contractual Schemes which has not yet been made by the Board. The following instrument therefore assumes that that draft instrument has been made by the FSA Board in the form consulted on there, and it builds on that text and adds to it by identifying changes against the text of that draft. Readers should therefore read this draft instrument in conjunction with the draft instrument in CP12/5.

Additionally, there are some further insignificant changes which will still have to be made to the final ACS instrument; however, these changes are minor and do not require further consultation. They will be included in the final ACS instrument, which will be a consolidated instrument containing all of the changes which the FCA is making.

It should also be noted that the following text is based on changes that the Treasury is proposing to make to their Statutory Instrument; however, these changes have not yet been laid before Parliament and may be subject to further change.

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

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B(3) (FCA general rules: clients’ money, right to rescind etc.);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules);
 - (f) section 248 (Scheme particulars rules);
 - (g) section 261C (Applications for authorisation of contractual schemes);
 - (h) section 261I (Contractual scheme rules); and
 - (i) section 261J (Contractual scheme particulars rules);
 - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

[Editor’s Note: This draft instrument sets out changes to text which is currently contained in the Handbook, and also sets out changes to text on which the FSA consulted in CP12/5 *Quarterly consultation (No 32)* (March 2012) (“CP12/5”). For ease of use, this draft instrument therefore uses the text of Appendix 8 to CP12/5 and assumes that that text had been made by the Board of the FSA in the form in which it had been consulted upon. Changes highlighted in this draft instrument are therefore changes to the Handbook as it would have read had the Board of the FSA made the all of the changes proposed in CP12/5.

[It should also be noted that the text of this draft instrument is based on the Treasury’s draft Statutory Instrument entitled ‘The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013’, the text of which has not yet been laid before Parliament and which may be subject to further revision.]

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex B to this instrument.

Citation

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

By order of the Board of the Financial Conduct Authority
[*date*]

Annex A

Amendments to the Glossary of definitions

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

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

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

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

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

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

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

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

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

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

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

nominated the *person* nominated by the *operator* of a proposed *limited partnership*

partner *scheme* to be the only limited partner (but not a *participant*) of the *scheme* on its formation.

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

Amend the following as shown.

affected person ...

- (c) (in relation to an *ACS*):
- (i) the *authorised fund manager*;
 - (ii) the *depository*;
 - (iii) any *investment adviser* of the *authorised fund manager*;
 - (iv) any *associate* of any *person* in (c)(i), (ii) or (iii);
 - (v) the auditor of the *scheme*;
 - (vi) the *nominated partner*.

contractual scheme deed (in *COLL*) the deed referred to in *COLL* 3.2.3AR (The contractual scheme deed for *ACS*s), together with any deed expressed to be supplemental to it, made between the *authorised fund manager* and:

- (1) the *depository*, in the case of a *co-ownership scheme*; or
- (2) the *nominated partner*, in the case of a *limited partnership scheme*.

depository

- (1) ...
- (ca) ...
- (cb) (in relation to an *ACS* which is a *co-ownership scheme*) the *person holding who holds* the property of subject to the *scheme* for the *participants* or to whose order that property is held, as required by section 235A(3)(d)(i) ~~or (6)(d)(i)~~ of the *Act* (Contractual schemes);
- (cc) (in relation to an *ACS* which is a *limited partnership scheme*) the *person* who holds the property subject to the *scheme* or to whose order that property is held, and who has been appointed to be the *person* to whom the *property* subject to the *scheme* is entrusted for safekeeping, as required by section 235A(6)(e)(i) of the *Act* (Contractual schemes);

...

...

unitisation

arrangements for a newly formed *AUT* or *ACS* under which:

- (a) the whole or part of the property of a *body corporate* (or a *collective investment scheme*) becomes the first ~~property to be held on the trusts~~ *scheme property* of the *AUT* or *ACS*; and
- (b) the *holders* of:
 - (i) *shares* in the *body corporate* being wound up; or
 - (ii) *units* in the *collective investment scheme*, the property of which is being transferred;

become the first *participants* in the *AUT* or *ACS*.

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

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);*

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

...

...

...

1.2 Types of authorised fund

...

Types of authorised fund - explanation

1.2.2 G ...

(4) The changes referred to in (2) and (3) require approval by the *FCA* and further information on that process is provided in *COLLG* ~~3.1.5G~~ 3.1.6G (Notification of changes to unit trusts (~~section~~ sections 251 and 252A)) ~~and~~, *COLLG* 3.1.6AG (Notification of changes to ACSs (sections 261Q and 261S)), and *COLLG* 4.1.3G (Notification of changes to ICVCs (~~Regulation~~ Regulations 21 and 22A)).

...

3.2 The instrument constituting the scheme

Application

3.2.1 R This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*;
- (2) ...
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; ~~and~~
- (4) an *ICVC*; and
- (5) a *nominated partner*;

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

- (1) the *depository*, in the case of a *co-ownership scheme*; or
- (2) the *nominated partner*, in the case of a *limited partnership scheme*.

...

Table: contents of the instrument constituting the scheme

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

...	
	Unitholder's liability to pay
3	A provision that a <i>unitholder</i> <u>in an <i>AUT</i>, <i>ICVC</i> or <i>co-ownership scheme</i></u> is not liable to make any further payment after he has paid the <i>price</i> of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> which he holds.
3A	<u>A provision that a <i>unitholder</i> in a <i>limited partnership scheme</i> is not liable for the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised fund manager</i> to meet those debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business.</u>
3B	<u>A provision that the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business.</u>

...		
		Certificates
15		A statement:
	(1)	<u>for ICVCs and AUTs</u> , authorising the issue of <i>bearer certificates</i> if any, and how such <i>holders</i> are to identify themselves; and
	...	
...		
		ICVCs <u>and ACSs</u> : Charges and expenses
22		A statement that charges or expenses of the <i>ICVC</i> or <u>ACS</u> may be taken out of the <i>scheme property</i> .
...		
		Co-ownership schemes: Umbrella schemes - principle of limited recourse
22B		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 <u>participants</u> in that <i>sub-fund</i> <u>as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund)</u> and must not be used to discharge any liabilities of, or <u>meet any claims against, any person other than the participants in any other that sub-fund.</u>
...		
		ACSs: ownership of scheme property
27C		A statement that, subject to the provisions of the <i>contractual scheme deed</i> and all <i>rules</i> made under section 261H <u>261I</u> of the <i>Act</i> (Contractual scheme rules) and for the time being in force:
	(1)	the <i>scheme property</i> (other than sums standing to the credit of the <i>distribution account</i>) is held by, <u>or to the order of</u> , the <i>depository</i> for and on behalf of the <i>unitholders</i> <u>according to the number of units held by each unitholder</u> 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
	(2)	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>and</u>
	(3)	<u>the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants).</u>

...		
	<u>ACsSs: unit transfers</u>	
27E	A statement that <i>units</i> are not transferable unless the <i>units</i> are transferred:	
	(1)	on the death of any joint <i>holder</i> to the surviving joint <i>unitholder</i> or <i>unitholders</i>; or
	(2)	on the death of a <i>holder</i> (who was not a joint <i>holder</i>) to the deceased <i>holder's</i> executor or administrator; or
	(3)	to another <i>person</i> when required by insolvency law; or
	(4)	to a <i>body corporate</i> upon the merger or restructuring of the <i>holder</i>; or
	(5)	when the law otherwise requires their transfer.
	<u>ACsSs: UCITS and NURS eligible investors</u>	
27E	For an <i>ACS</i> which is a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i> , a statement that <i>units</i> may not be <i>issued</i> to a <i>person</i> other than a:	
	(1)	<i>professional ACS investor</i> ; or
	(2)	<i>large ACS investor</i> ; or
	(3)	<i>person</i> who already holds <i>units</i> in the <i>scheme</i> .
27F	A statement that the <i>authorised fund manager</i> must <i>redeem units</i> as soon as practicable after becoming aware that those <i>units</i> are vested in anyone other than a <i>person</i> mentioned in paragraph 27E.	
	<u>ACsSs: UCITS and NURS transfer of units</u>	
27G	(1)	A statement whether the transfer of <i>units</i> in the <i>ACS scheme</i> is <u>either</u> :
		(a) <u>prohibited</u> ; or
		(b) <u>allowed</u> .
	(2)	Where transfer of <i>units</i> is allowed in accordance with (1)(b), a statement that <i>units</i> may only be transferred in accordance with the <u>conditions specified by <i>FCA rules</i>, including that <i>units</i> may not be transferred to a <i>person</i> other than a:</u>
		(a) <i>professional ACS investor</i> ;
		(b) <i>large ACS investor</i> ; or

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

...

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:
	...
	(bb) a statement that <i>unitholders in an AUT, ICVC or co-ownership scheme</i> are not liable for the debts of the <i>authorised fund</i> ;
	(bc) a statement that the <i>scheme property</i> of a <i>co-ownership scheme</i> is <u>beneficially owned by the <i>participants</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i>)</u> ;
	(bd) a statement that a <i>unitholder</i> in a <i>limited partnership scheme</i> is not <u>liable for the debts or obligations of the <i>limited partnership scheme</i> beyond the amount of the <i>scheme property</i> which is available to the <i>authorised fund manager</i> to meet such debts or obligations, provided that the <i>unitholder</i> does not take part in the management of the partnership business</u> ;
	(be) a statement that the exercise of rights conferred on <i>limited partners</i> by <i>FCA rules</i> does not constitute taking part in the management of the partnership business;
	...
Umbrella ICVCs or co-ownership schemes	
2A	The following statements for an <i>ICVC</i> or a <i>co-ownership scheme</i> which is an <i>umbrella</i> :
	(a) for an <i>ICVC</i> which is an <i>umbrella</i> , a statement that 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;
	(aa) for a <i>co-ownership scheme</i> which is an <i>umbrella</i> , a statement that the property subject to a <i>sub-fund</i> is beneficially owned by the <i>participants</i> in that <i>sub-fund</i> <u>as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>)</u> and must not be used to discharge any liabilities of, or meet any claims

		<u>against, any person other than the participants in any other that sub-fund; and</u>
	(b)	for an <i>ICVC</i> or a <i>co-ownership scheme</i> which is an umbrella , a statement that while the provisions of the <i>OEIC Regulations</i> , and section 261N <u>261P</u> (Pooling in relation to separate parts of the property <u>Segregated liability in relation to umbrella co-ownership schemes</u>) of the <i>Act</i> in the case of <i>co-ownership schemes</i> , provide for segregated liability between <i>sub-funds</i> , the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under <i>foreign law contracts</i> , it is not yet known how those foreign courts will react to regulations 11A and 11B of the <i>OEIC Regulations</i> or, as the case may be, section 261N <u>261P</u> of the <i>Act</i> .
...		
Characteristics of the units		
...		
<u>5A</u>	<u>ACSs: UCITS and NURS eligible investors</u>	
	(a)	<u>A statement that units may not be issued to a person other than a:</u>
	(i)	<u>professional ACS investor; or</u>
	(ii)	<u>large ACS investor; or</u>
	(iii)	<u>person who already holds units in the scheme.</u>
	(b)	<u>A statement that the authorised fund manager must redeem units as soon as practicable after becoming aware that those units are vested in anyone other than a person mentioned in paragraph 5A(a).</u>
<u>5B</u>	<u>ACSs: UCITS and NURS transfer of units</u>	
	(a)	<u>A statement whether the transfer of units in the ACS scheme is either:</u>
	(i)	<u>prohibited; or</u>
	(ii)	<u>allowed by the instrument constituting the scheme and prospectus.</u>
	(b)	<u>Where transfer of units is allowed by the instrument constituting the scheme and prospectus in accordance with (a)(ii), a statement that units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a:</u>

	(i)	<u>professional ACS investor; or</u>
	(ii)	<u>large ACS investor; or</u>
	(iii)	<u>person who already holds units in the scheme.</u>
	(c)	<u>For a co-ownership scheme which is an umbrella, a statement in accordance with (a)(i) or (a)(ii) and, where appropriate, a statement in accordance with (b) must be made for each sub-fund.</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 authorised fund manager of the AUT or ACS and the depositary which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;
	(ca)	<u>in the case of an ACS, a summary of the material provisions of the contracts between the authorised fund manager and the nominated partner, and between the authorised fund manager and depositary, which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;</u>
	...	
...		

...

6.2 Dealing

...

Purpose

6.2.2 G ...

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

fairly when arranging for the *issue* or *cancellation* of *units*, and treats *clients* fairly when they purchase or *sell units*.

...

- (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 in an AUT or ACS

6.2.6 R ...

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

...

Controls over the issue and cancellation of units

6.2.8 R (1) ~~Subject to (4), an~~ 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*.

...

- (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:

...

...

Sale and redemption

6.2.16 R ...

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

...

6.4 Title and registers

...

The authorised fund manager as unitholder

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

Transfer of units by act of parties: AUTs and ACSs

6.4.6 R ...

- (1A) Provided:
- (a) the requirements in *COLL 6.4.6AR* (Transfer of units in an ACS) are satisfied; and
- (b) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified

by *FCA rules*;

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

...

Transfer of units in an ACS

- 6.4.6A R (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised fund manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of paragraph (27G) of *COLL* 3.2.6R (Table: contents of the instrument constituting the scheme) and paragraph (5B) of *COLL* 4.2.5R (Table: contents of the prospectus), *units* ~~Units~~ in an the *ACS* may only be transferred to a *person* that is a:
- (a) ~~on the death of any joint *holder* to the surviving joint *unitholder* or *unitholders*~~ professional *ACS* investor; or
- (b) ~~on the death of a *holder* (who was not a joint *holder*) to the deceased *holder's* executor or administrator~~ large *ACS* investor; or
- (3) (c) ~~to another *person* when required by insolvency law; or~~ *person* who already holds *units* in the *scheme*.
- (4) ~~to a *body corporate* upon the merger or restructuring of the *holder*;~~
~~or~~
- (5) ~~where the law otherwise requires their transfer.~~
- 6.4.6B G The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised fund manager*. The *authorised fund manager* is expected to comply with its responsibilities under *COLL* 6.6.3BR (Redemption of *ACS* units by an authorised fund manager) in such cases by redeeming such *units*.

Certificates (including bearer certificates)

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

contractual scheme deed permits.

...

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 of</i> an <i>ICVC</i>	<i>Depositary</i> of an <i>ICVC</i>	<i>Authorised</i> <i>fund</i> <i>manager</i> of an <i>AUT</i> or <i>ACS</i>	<i>Depositary</i> of an <i>AUT</i> or <i>ACS</i>
...						
6.5.9R *					x	x
...						
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>. [deleted]				

...

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

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

...

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

...

Functions of the authorised fund manager in relation to ACS units

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

Redemption of ACS units by an authorised fund manager

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

...

8.1 **Introduction**

...

Qualified investor schemes: eligible investors

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

for a person that also falls into one or more of the categories set out in COLL 8 Annex 2R (ACS Qualified Investor Schemes: eligible investors).

Qualified investor schemes- explanation

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

(1A) The *authorised fund manager* of an *ACS* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to the *client* types set out in COLL 8 Annex 1R and COLL 8 Annex 2R.

...

...

8.2 Constitution

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to COLL 8.2.5R

1	Description of the authorised fund	
	Information detailing:	
	...	
	(2)	that the <i>authorised fund</i> is a <i>qualified investor scheme</i> ; <u>and</u>
	(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; and
	(4)	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>.
2	Constitution	
	The following statements:	
	...	
	(4B)	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> <u>as tenants in common (or, in Scotland, is the common property of the <i>participants</i> in that <i>sub-fund</i>)</u> and must not be used to discharge any liabilities of, <u>or meet any claims against, any person other than the <i>participants</i> in any other that <i>sub-fund</i>;</u>	
	(4C)	<u>for a limited partnership scheme, the scheme prohibits pooling as is mentioned in section 235(3)(a) of the Act in relation to separate parts of the scheme property, with the effect that the scheme cannot be an umbrella;</u>	
	...		
	(6)	for an ACS:	
		(a)	the <i>contractual scheme deed</i> :
			...
			(iv) states that <i>units</i> are not transferable, unless the <i>units</i> are being transferred <u>may not be issued to a person other than a person that:</u>
			(A) to a surviving joint <i>holder</i> upon the death of a joint <i>holder</i> ; or is a:
			(i) <u>professional ACS investor;</u>
			(ii) <u>large ACS investor; or</u>
			(iii) <u>person who already holds <i>units</i> in the scheme; and</u>
			(B) 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 falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors);
			(C) to another <i>person</i> when required by insolvency law; or
			(D) to a <i>body corporate</i> upon the merger or restructuring of the <i>holder</i> ; or
			(E) when the law otherwise requires their transfer;
			(v) states that the <i>authorised fund manager</i> of an ACS

				must <i>redeem units</i> as soon as practicable after becoming aware that those <i>units</i> are vested in anyone other than a <i>person</i> mentioned in (iv)(A) and (B).	
			(vi)	states that for a <i>co-ownership scheme</i> :	
				(A)	<u>the <i>scheme property</i> is beneficially owned by the <i>participants</i> as tenants in common (or, in Scotland, is the common property of the <i>participants</i>);</u>
				(B)	<u>the arrangements constituting the <i>scheme</i> are intended to constitute a <i>co-ownership scheme</i> as defined in section 235A of the <i>Act</i>; and</u>
				(C)	<u>the <i>operator</i> and <i>depository</i> are required to wind up the <i>scheme</i> if directed to do so by the <i>FCA</i> in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the <i>Act</i>;</u>
			(vii)	states:	
				(A)	<u>whether the transfer of <i>units</i> in the <i>ACS scheme</i> or, for a <i>co-ownership scheme</i> which is an <i>umbrella</i>, in each <i>sub-fund</i> is either:</u>
				(i)	<u>prohibited; or</u>
				(ii)	<u>allowed;</u>
				(B)	<u>where transfer of <i>units</i> is allowed by the <i>scheme</i> or, where appropriate the <i>sub-fund</i> in accordance with (A)(ii), <i>units</i> may only be transferred in accordance with the conditions specified by <i>FCA rules</i>, including that <i>units</i> may not be transferred to a <i>person</i> other than a <i>person</i> that:</u>
				(i)	<u>is a:</u>
				(1)	<u><i>professional ACS investor</i>;</u> <u>or</u>
				(2)	<u><i>large ACS investor</i>; or</u>

						(3) <u>person who already holds units in the scheme; and</u>
					(ii)	<u>falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors); and</u>
			(viii)	<u>states that for a limited partnership scheme the scheme is not dissolved on any person ceasing to be a limited partner or nominated partner provided that there remains at least one limited partner;</u>		
		(b)	subject to the provisions of the <i>contractual scheme deed</i> and all the <i>rules</i> made under section 261H 261I of the <i>Act</i> (Contractual scheme rules) <u>and for the time being in force:</u>			
			(i)	<u>the scheme property (other than sums held standing to the credit of the distribution account) is held by, or to the order of, the depositary for and on behalf of the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and</u>		
			(ii)	<u>the sums standing to the credit of any distribution account are held by the depositary to distribute or apply them in accordance with COLL 8.5.15R (Income); and</u>		
		(c)	<u>a unitholder in a co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds;</u>			
		(d)	<u>a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised fund manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;</u>			
		(e)	<u>the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business;</u>			
		(f)	<u>the operator of a co-ownership scheme is authorised to:</u>			

			(i)	<u>acquire, manage and dispose of the <i>scheme property</i>; and</u>
			(ii)	<u>enter into contracts which are binding on <i>unitholders</i> for the purposes of, or in connection with, the acquisition, management or disposal of <i>scheme property</i>.</u>
...				

...

8.3 Investor relations

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL 8.3.2R*

...				
5	...			
<u>5A</u>	<u>Issue of units in ACSs: eligible investors</u>			
	(1)	<u>A statement that <i>units</i> may not be <i>issued</i> to a <i>person</i> other than to a <i>person</i> who:</u>		
		(a)	<u>is a:</u>	
			(i)	<u><i>professional ACS investor</i>; or</u>
			(ii)	<u><i>large ACS investor</i>; or</u>
			(iii)	<u><i>person</i> who already holds <i>units</i> in the <i>scheme</i>; and</u>
		(b)	<u>falls within one or more of the categories set out in <i>COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors)</i>.</u>	
	(2)	<u>A statement that the <i>authorised fund manager</i> of an <i>ACS</i> must <i>redeem units</i> as soon as practicable after becoming aware that those <i>units</i> are vested in anyone other than a <i>person</i> mentioned in (1).</u>		
<u>5B</u>	<u>Transfer of units in ACSs:</u>			
	(1)	<u>A statement whether the transfer of <i>units</i> in the <i>ACS scheme</i> is either:</u>		
		(a)	<u>prohibited; or</u>	

		(b)	<u>allowed by the instrument constituting the scheme and prospectus.</u>
	(2)	<u>A statement that where transfer of units is allowed by the instrument constituting the scheme and prospectus in accordance with (1)(b), units may only be transferred in accordance with the conditions specified by FCA rules, including that units may not be transferred to a person other than a person that:</u>	
		(a)	is a:
		(i)	<u>professional ACS investor; or</u>
		(ii)	<u>large ACS investor; or</u>
		(iii)	<u>person who already holds units in the scheme; and</u>
		(b)	<u>falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).</u>
	(3)	<u>For a co-ownership scheme which is an umbrella, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2) must be made for each sub-fund.</u>	
...			
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:	
		...	
		(aa)	for a <i>co-ownership scheme</i> , the property subject to a <i>sub-fund</i> is beneficially owned by the <i>participants</i> in that <i>sub-fund</i> <u>as tenants in common (or, in Scotland, is the common property of the participants in that sub-fund)</u> and must not be used to discharge any liabilities of, <u>or meet any claims against, any person other than the participants in any other that sub-fund</u> ; and
		...	
...			
18B	Information on authorised contractual schemes		
	<u>A statement that:</u>		

	(1)	<u>a unitholder in a co-ownership scheme is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds;</u>
	(2)	<u>a unitholder in a limited partnership scheme is not liable for the debts or obligations of the limited partnership scheme beyond the amount of the scheme property which is available to the authorised fund manager to meet such debts or obligations, provided that the unitholder does not take part in the management of the partnership business;</u>
	(3)	<u>the exercise of rights conferred on limited partners by FCA rules does not constitute taking part in the management of the partnership business; and</u>
	(4)	<u>the scheme property of a co-ownership scheme is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants).</u>
...		

...

8.5 Powers and responsibilities

...

Issues and cancellations of units

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

...

Transfer of units in an ACS

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

units.

Responsibilities of the authorised fund manager in relation to ACS units

- 8.5.10D R (1) The authorised fund manager of an authorised contractual scheme which is a qualified investor scheme must take reasonable care to ensure that rights or interests in units in the scheme are not acquired by any person from or through an intermediate unitholder in a qualified investor scheme, unless that person:
- (a) is a:
 - (i) professional ACS investor; or
 - (ii) large ACS investor; or
 - (iii) person who already holds units in the scheme; and
 - (b) falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).
- (2) The authorised fund manager will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another person.

Redemption of ACS units in a QIS by an authorised fund manager

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

...

8 Annex 1R Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3R

...

	The following Notes explain certain words and phrases used in the table above.
	...
Note 6	In the case of an ACS, units are only transferable in the following circumstances:

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

8 Annex 2R ACS Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3R and 8.1.4R.

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

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

Appendix 5B

Draft amendments to the Collective Investment Scheme Information Guide (COLLG)

Amendments to the Collective Investment Scheme Information Guide (COLLG)

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

1A Overview

1A.1 Introduction

About this guide

1A.1.1 G ...

- (6) The guide is current as of ~~November 2012~~ April 2013. The guide does not remove the need for *firms* to keep up to date with regulatory developments and to consider the potential impact on business of proposed changes - for example, the regulatory framework of changes required by further European Union (*EU*) initiatives.

...

Structure of collective investment regulation in the United Kingdom

1A.1.2 G ...

- (3) The main *UK* legislation is the *Act* (under which *AUTs* and *ACSs* operate) and the Open-Ended Investment Company Regulations (*OEIC Regulations*) (under which *ICVCs* (also known as *OEICs*) operate). *COLLG* 3A (The *FCA*'s responsibilities under the *Act*) provides details on the *FCA*'s responsibilities under the *Act*; how a *firm* may go about applying for authorisation of a *unit trust scheme* or an authorised contractual scheme, or recognition of an overseas *scheme*; and what notifications are required to the *FCA* in terms of changes to those *schemes*. *COLLG* 4A (The *FCA*'s responsibilities under the *OEIC Regulations*) provides details on the *FCA*'s responsibilities under the *OEIC Regulations*; how a *firm* may go about applying for authorisation of an *ICVC*; and what notifications are required to the *FCA* in respect of changes to the *ICVC*.
- (4) The main *FCA* requirements are set out in the *Handbook*, in particular in *COLL*. *COLL* is a specialist sourcebook of the *Handbook* and is structured in a way that gives *rules* and *guidance* on specific aspects of *AUT*, *ACS* and *ICVC* regulation and on *recognised schemes*. *COLLG* 5A (The *COLL* sourcebook) provides details of the structure of *COLL*.

What are regulated collective investment schemes?

- ##### 1A.1.3 G (1) *Regulated collective investment schemes* are *collective investment schemes* which are regulated by the *FCA* as *authorised funds* or

recognised by the *FCA* as *recognised schemes*:

- (a) *authorised funds* must take the form of an *AUT* (an *authorised unit trust scheme*), an *ACS* (an *authorised contractual scheme*) or an *ICVC* (an *investment company with variable capital*) (as described in more detail below), must be established in the *United Kingdom* and must be:

...

...

...

What is an ACS?

- 1A.1.4A G (1) An ACS (or authorised contractual scheme) is a scheme which is authorised by the FCA by making an authorisation order. Under section 235A of the Act (Contractual schemes), an ACS is a collective investment scheme. There are two kinds of ACS, namely the co-ownership scheme and the limited partnership scheme.
- (2) An ACS which is a co-ownership scheme is a collective investment scheme in which the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants), which is held by, or to the order of, a depositary. The co-ownership scheme is constituted by a contractual scheme deed, entered into by the authorised fund manager and depositary. Scheme property is held by, or to the order of, the depositary. Under section 261D(4) (Authorisation orders) of the Act the authorised fund manager and depositary must be independent of each other.
- (3) An ACS which is a limited partnership scheme is constituted by a contractual scheme deed, entered into by the operator and the nominated partner (rather than the depositary). The nominated partner is a person nominated by the operator of a proposed limited partnership scheme to be the only limited partner of the scheme on its formation. A depositary will be appointed, and scheme property is held by, or to the order of, the depositary. Under section 261D(4) of the Act the authorised fund manager and depositary must be independent of each other.
- (4) Units in an ACS which is a UCITS or a NURS may not be issued to a person other than a:
- (a) professional ACS investor; or
- (b) large ACS investor; or
- (c) person who already holds units in the scheme.

- (5) Units in an ACS which is a QIS may not be issued to a person other than a person who:
- (a) is a:
 - (i) professional ACS investor; or
 - (ii) large ACS investor; or
 - (iii) person who already holds units in the scheme; and
 - (b) who falls within one or more of the categories set out in COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).
- (6) Transfer of units in an ACS, whether a co-ownership scheme or a limited partnership scheme, may either be:
- (a) prohibited; or
 - (b) allowed by the scheme only if specified conditions are met; under the terms of its instrument constituting the scheme.
- (7) Where transfer of units in an ACS is allowed by its instrument constituting the scheme and prospectus, units may only be transferred in accordance with the conditions specified by FCA rules. The FCA has specified conditions by way of FCA rules for this purpose (see COLL 6.4.6AR(2) (Transfer of units in an ACS) and COLL 8.5.10BR(2) (Transfer of units in an ACS)), the effect of which is that units may only be transferred to a person who is:
- (a) a professional ACS investor; or
 - (b) a large ACS investor; or
 - (c) an existing unitholder in the scheme.
- In addition, for an ACS that is a QIS, units may only be transferred to an investor that falls within one or more of the categories permitted by COLL 8 Annex 1R (Qualified Investor Schemes: eligible investors).
- (8) These regulatory requirements in relation to the transfer of units in an ACS are not intended to interfere with the transfer of units by operation of law (upon death or bankruptcy of the unitholder, or otherwise).
- (9) The authorised fund manager of an ACS is required to redeem units as soon as practicable after becoming aware that those units are vested in anyone other than a person mentioned in (4) or (5), as appropriate.
- (10) The authorised fund manager must take reasonable care to ensure that interests or rights in units of an ACS are not acquired by any person

from or through an intermediate unitholder or an intermediate unitholder in a qualified investor scheme, unless that person is a person mentioned in (4) or (5), as appropriate.

...

Authorisation to carry on regulated activities

- 1A.1.6 G (1) No *person* may carry on a *regulated activity* by way of business in the *United Kingdom*, or purport to do so, unless he is an *authorised person* (or an *exempt person*). This prohibition is referred to in the *Act* as the *general prohibition*. *Guidance* for persons considering carrying on *regulated activities* in the *United Kingdom* can be found in *PERG*. The *FCA* website page "How do I get authorised?" (<http://www.fca.gov.uk/doing/how>) gives *guidance* on how to apply to the *FCA* for a *Part IV permission*. This *authorisation* is different to the authorisation of an *AUT*, an *ACS* or an *ICVC*, as referred to in *COLLG 1A.1.4G*, *COLLG 1A.1.4AG* and *COLLG 1A.1.5G* respectively.
- (2) The following constitute *regulated activities*:
- (a) ...
- (b) acting as trustee of an authorised unit trust scheme; ~~and~~
- (ba) *acting as depositary of an authorised contractual scheme*; and
- ...
- ...

...

3A The FCA's responsibilities under the Act

3A.1 Introduction

...

Application for authorisation as an ACS (sections 261C, section 261D and 261E)

- 3A.1.3A G (1) The *FCA* requires an application for authorisation of an *authorised contractual scheme* to be made jointly by the *authorised fund manager* and *depositary*, both of which must be:
- (a) *authorised persons under the Act* with the appropriate *Part IV permissions*; and
- (b) independent of each other (see *COLL 6.9.2G (Independence of depositaries and scheme operators)* which provides *guidance on independence*).

- (2) The application must contain details of the *authorised fund manager* and *depository*, of the *scheme* itself, and of other *persons* to whom functions are to be delegated (e.g. the *registrar* and the *investment adviser*).
- (3) Application forms are available free of charge from the forms page at [FCA/form_links.jsp#collAnc](#).
- (4) A *fee* is payable and must be submitted with the application (see *FEES* 3 Annex 2 (Application and notification fees payable in relation to collective investment schemes)).
- (5) The following items must be provided with the application:
 - (a) a copy of the *contractual scheme deed*;
 - (b) a solicitor's certificate stating that the *contractual scheme deed* complies with the *rules* made under section 261I of the *Act* (Contractual scheme rules);
 - (c) a copy of the *prospectus*, with a checklist indicating the location of the information required by *COLL* to be contained in it;
 - (d) in the case of an application relating to the authorisation of a *UCITS scheme*, a copy of the *key investor information document*;
 - (e) in the case of an application relating to the authorisation of a *simplified prospectus scheme*, a copy of the *simplified prospectus*; and
 - (f) if applicable, *documents* evidencing any guarantee arrangement.
- (6) The name of the *scheme* must not be undesirable or misleading and its purpose must be reasonably capable of being successfully carried into effect. *COLL* 6.9 (Independence, names and UCITS business restrictions) provides *guidance* on what the *FCA* considers undesirable or misleading names.

Determining and refusing applications for an AUT (sections 244 and 245)

3A.1.4 G ...

Determining and refusing applications for an ACS (sections 261F and 261G)

- 3A.1.4A G (1) Under section 261F of the *Act* (Determination of applications), the *FCA* has:
- (a) up to 2 *months* in the case of a proposed *UCITS*; or
 - (b) up to 6 *months* in the case of any other proposed *scheme*;

in which to consider a completed application following its receipt and must inform the *authorised fund manager* and *depository* of its decision within that timescale. In practice, the *FCA* aims to process 75% of completed applications relating to a *UCITS scheme* within 6 weeks. If the *FCA* is satisfied with the application, an *authorisation order* is issued for the *scheme*.

- (2) If the *FCA* proposes to refuse an application, it must give a *warning notice* which will contain the reasons for the refusal. If, having given the *warning notice*, it decides to refuse the application, a *decision notice* will be sent and the applicant may refer the matter to the *Tribunal*.

Revocation of authorisation for an AUT (section 254)

3A.1.5 G ...

Revocation of authorisation for an ACS (section 261U)

- 3A.1.5A G (1) The *FCA* can revoke an *authorisation order* in relation to an *ACS* if:
- (a) the requirements of authorisation are no longer satisfied; or
 - (b) the *authorised fund manager* or *depository* has contravened any provision of the *Act* or any *rules* or regulations made under it, or has given false or misleading information to the *FCA*; or
 - (c) no *regulated activity* is being carried on in relation to the *scheme* and the period of that inactivity began at least twelve *months* earlier; or
 - (d) it is undesirable for investors or potential investors that the *authorised contractual scheme* should continue.
- (2) The *FCA* may refuse to revoke an *authorisation order* if it considers that:
- (a) any matter should be investigated prior to revocation; or
 - (b) revocation would not be in the interests of investors; or
 - (c) revocation would be incompatible with the *UCITS Directive*.
- (3) If the *FCA* proposes to revoke an *authorisation order*, a separate *warning notice* will be sent to the *authorised fund manager* and *depository*. The same procedures as stated for refusal of authorisation, in relation to the *warning notice* and *decision notice*, will apply.

Notification of changes to unit trusts (sections 251 and 252A)

3A.1.6 G ...

Notification of changes to ACSs (sections 261Q and 261S)

- 3A.1.6A G (1) The *authorised fund manager* must give written notice to the *FCA* when:
- (a) an alteration to the *authorised contractual scheme* is proposed;
or
 - (b) it is proposed that the *depository* should retire or be replaced.
- (2) Any proposal that involves a change in the *contractual scheme deed* must be accompanied by a solicitor's certificate stating that the change will not affect the compliance of the deed with the *rules*.
- (3) The *depository* must give written notice to the *FCA* of a proposal to replace the *authorised fund manager*.
- (4) The *authorised fund manager* must give written notice to the *FCA* of a proposal to replace the *depository*.
- (5) The *FCA* has one *month* following receipt of the notice under section 261Q (Alteration of contractual schemes and changes of operator and depository) to consider whether or not to refuse the proposal. In the case of a notice under section 261S (Proposal to convert to a non-feeder UCITS) the period available to the *FCA* is 15 *working days*.

Powers of intervention for an AUT or recognised scheme (sections 257 and 281)

3A.1.7 G ...

Powers of intervention for an ACS (section 261X)

3A.1.7A G The *FCA* has powers of intervention if there is a breach of the *Act* or *COLL*, or if exercising these are in the interests of *unitholders* or potential *unitholders* in a *scheme*. In respect of an *ACS*, directions can be made for the *authorised fund manager* to suspend the *issue* and *redemption* of *units* or to wind up the *scheme*.

Scheme particulars for an AUT (section 248)

3A.1.8 G ...

Scheme particulars for an ACS (section 261J)

3A.1.8A G The *Act* empowers the *FCA* to require an *authorised fund manager* to publish *scheme particulars*. *COLL* 4 (Investor relations) which refers to the *scheme particulars* as a *prospectus*, sets out details of the required contents, the timing of publication, and how and when the *prospectus* must be offered to prospective investors.

Sub-funds of co-ownership scheme umbrellas

- 3A.1.8B G An ACS which is a co-ownership scheme (but not an ACS that is a limited partnership scheme) may be structured as an umbrella. Section 261P of the Act implements segregated liability in relation to umbrella co-ownership schemes. As a result, the property subject to a sub-fund of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-fund. COLL provides for:
- (1) disclosure requirements in respect of the limited recourse to the assets and liabilities of a particular sub-fund in the instrument constituting the scheme (see COLL 3.2.6R paragraph 22B and COLL 8.2.6R paragraph 4B (Table: contents of the instrument constituting the scheme)) and the prospectus (see COLL 4.2.5R paragraph 2A and COLL 8.3.4R paragraph 17(5)(aa) (Table: contents of the prospectus));
 - (2) limitations on cross sub-fund investment (see COLL 5.2 (General investment powers and limits for UCITS schemes)) for UCITS schemes, COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) for non-UCITS retail schemes and COLL 8.4 (Investment and borrowing powers) for qualified investor schemes; and
 - (3) duties on the AFM to take appropriate action in relation to foreign law contracts which after prompt investigation appear to be inconsistent with the principle of limited recourse (see COLL 6.6.5AR (Duties of the ACD of an ICVC or the authorised fund manager of a co-ownership scheme: umbrella schemes) and 8.5.3AR (Duties of the ACD or the authorised fund manager of a co-ownership scheme: umbrella schemes)).

...

Recognition of individual overseas schemes (section 272)

- 3A.1.12 G (1) Section 272 covers overseas schemes that are not recognised by virtue of section 264 or section 270. The FCA may make an order declaring the scheme to be recognised if it is satisfied that the scheme will afford adequate protection (i.e. a similar level of protection to that provided under the Act) for investors, and the arrangements for the scheme's constitution and management, and the powers and duties of the operator and of any trustee or depositary, are also "adequate". In deciding what is adequate, the FCA will consider the rules applicable to AUTs, ACSs or ICVCs.

...

...

4A The FCA's Responsibilities under the OEIC Regulations

4A.1 Introduction

...

Applications for authorisation (Regulations 12-17)

4A.1.2 G ...

- (6) The name of the *ICVC* must not be undesirable or misleading and must not be the same as that of an existing company. Regulation 19 includes a list of words and expressions that are prohibited from inclusion within the name of an *ICVC* and further *guidance* can be found in *COLL* 6.9 (Independence, names and UCITS business restrictions). As with an *AUT* and an *ACS*, the aim of the *ICVC* must be reasonably capable of being achieved.
- (7) As with an *AUT* and an *ACS*, the *FCA* has:
- (a) in the case of a proposed *UCITS* up to 2 months; or
 - (b) in the case of any other proposed *scheme* up to 6 months,
- to determine a completed application, but aims to process 75% of applications for *UCITS* schemes within six weeks. If the *FCA* is satisfied with the application, an *authorisation order* is issued. The *ICVC* becomes incorporated when the *authorisation order* is issued.

...

Revocation of authorisation (Regulation 23)

- 4A.1.4 G The *FCA* can revoke or refuse to revoke an *authorisation order* on similar grounds to those for an *AUT* and an *ACS*. If it proposes to do so, similar procedures for *warning notices* and *decision notices* as for *AUTs* and *ACSs* apply (see *COLLG* 3A.1.5G (2 3) and *COLLG* 3A.1.5AG(3) respectively).

...

Sub-funds of umbrella *ICVC*

- 4A.1.8 G Regulations 11A, 11B and 33C implement a protected cell regime for *sub-funds* of *umbrella ICVCs*. As a result a *unitholder* in a solvent *sub-fund* of an *umbrella ICVC* receives protection in respect of liabilities of and claims against: (i) the umbrella company; and (ii) any other *sub-fund*. *COLL* provides for:
- (1) disclosure requirements in respect of the limited recourse to the assets and liabilities of a particular *sub-fund* in the *instrument constituting the scheme* (see *COLL* 3.2.6R (Table: contents of the instrument constituting the scheme) paragraph 22A) and the *prospectus* (see *COLL* 4.2.5R (Table: contents of the prospectus) paragraph 2A);

- (2) limitations on cross *sub-fund* investment (see *COLL* 5.2 (General investment powers and limits for UCITS schemes) for *UCITS schemes* and *COLL* 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) for *non-UCITS retail schemes*); and
- (3) duties on the *ACD* to take appropriate action in relation to *foreign law contracts* which after prompt investigation appear to be inconsistent with the principle of limited recourse (see *COLL* 6.6.5AR (Duties of the *ACD* of an *ICVC* or the authorised fund manager of a co-ownership scheme: umbrella schemes)).

...

5A The COLL sourcebook

5A.1 Introduction

- 5A.1.1 G (1) ...
- (2) The material in *COLL* (excluding chapter 9) forms a major part of the product regulation regime for *ICVCs*, *ACSs* and *AUTs*, supplementing the material in the *OEIC Regulations* (for *ICVCs*), ~~and~~ chapter III of Part XVII of the *Act* (for *AUTs*) and Chapter 3A (for *ACSs*) and giving effect to the relevant parts of the *UCITS Directive*. This is shown in the diagram at *COLLG* 5A.1.5G.

...

Definition of terms in COLL

- 5A.1.2 G Some parts of *COLL* relate only to *ICVCs*, some parts only to *ACSs* and some other parts only to *AUTs*. However, most of *COLL* covers ~~both~~ *ICVCs*, *ACSs* and *AUTs*, so some of the defined terms included relate equally to ~~both~~ *ICVCs*, *ACSs* and *AUTs* (together collectively defined as "*authorised funds*"). Other key terms are:
- (1) "*authorised fund manager*", which refers to ~~both~~ the *ACD* of an *ICVC*, the authorised contractual scheme manager of an *ACS* and the ~~manager~~ authorised unit trust manager of an *AUT*;
 - (2) "*depository*", which when used for an *authorised fund* refers to ~~both~~ the *depository* of an *ICVC* and an *ACS*, and the *trustee* of an *AUT*; and
 - (3) "*unit*", which according to the context can refer to a "*share*" in an *ICVC*, a "*unit*" in an *AUT* and an *ACS*, and the rights or interests of *participants* in other types of *collective investment scheme*.

Outline of the content of COLL

- 5A.1.3 G The contents of *COLL* are outlined below.

...

- (6) *COLL 6* (Operating duties and responsibilities) contains *rules* on the day-to-day operation of *authorised funds* that are retail *schemes*. In particular:

...

- (c) *COLL 6.4* provides requirements relating to the *register* of *unitholders* in an *AUT* or *ACS* (see the *OEIC Regulations* for *ICVCs*) and any *plan register*;

...

...

- (8) *COLL 8* (Qualified Investor Schemes) provides a framework of *rules* for a *scheme* which restricts subscription to certain prescribed categories of investor (for *AUTs* and *ICVCs*, these are principally *professional clients* and sophisticated investors. For *ACs* these will additionally be *professional ACS investors* or *large ACS investors*). For such a *scheme*, the *FCA* considers that not all the detailed product *rule* protections that apply to retail *schemes* are necessary. This type of *scheme*, called a *qualified investor scheme*, satisfies the essential features of an authorised product and so distinguishes itself from an *unregulated collective investment scheme*, but otherwise is allowed more flexibility in its operation compared to the framework for retail *schemes*. *COLL 2* (Authorised fund applications) contains details of the application procedure for *qualified investor schemes*.

...

Appendix 5C

Designation of Handbook provisions

1. FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.
2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
Glossary	
“intermediate unitholder” (new)	FCA and PRA
“intermediate unitholder in a qualified investor scheme” (new)	FCA and PRA
“limited partner” (new)	FCA and PRA
“nominated partner” (new)	FCA and PRA
“professional ACS investor” (new)	FCA and PRA
“affected person” (amended)	FCA and PRA
“contractual scheme deed” (amended)	FCA and PRA
“depository” (amended)	FCA and PRA
“unitisation” (amended)	FCA and PRA
COLL	
1.1.1G	FCA
1.2.2G	FCA
3.2.1R	FCA
3.2.3AR	FCA
3.2.6R	FCA
4.2.5R	FCA
6.2.2G	FCA
6.2.6R	FCA
6.2.8R	FCA
6.2.11R	FCA
6.2.16R	FCA

¹ www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

6.4.5R	FCA
6.4.6R	FCA
6.4.6AR	FCA
6.4.6BG	FCA
6.4.7R	FCA
6.5.2R	FCA
6.5.9R	FCA
6.6.3AR	FCA
6.6.3BR	FCA
8.1.3R	FCA
8.1.4G	FCA
8.2.6R	FCA
8.3.4R	FCA
8.5.10R	FCA
8.5.10BR	FCA
8.5.10CR	FCA
8.5.10DR	FCA
8.5.10ER	FCA
COLL 8 Annex 1R	FCA
COLL 8 Annex 2R	FCA

PUB REF: 003152

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.