

PS 11/10

Financial Services Authority

Transposition of the revised UCITS Directive

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This Policy Statement reports on the main issues arising from the joint HM Treasury/FSA paper (*Transposition of UCITS IV: consultation document*) of December 2010 and publishes final rules.

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Abbreviations used in this paper

AFM	authorised fund manager
CESR	Committee of European Securities Regulators
COBS	The Conduct of Business sourcebook
COLL	The Collective Investment Schemes sourcebook
DISP	Dispute resolution: complaints (FSA Handbook)
EEA	European Economic Area
ESMA	European Securities and Markets Authority
FOS	The Financial Ombudsman Service
FSCS	Financial Services Compensation Scheme
KII	key investor information
NURS	non-UCITS retail scheme
OEIC	open-ended investment company
PRIPs	packaged retail investment products
SUP	The Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
UCITS	Undertaking for Collective Investment in Transferable Securities

1

Overview

Background

- 1.1 In December 2010 the Treasury and the FSA published a joint paper¹ on our proposals for implementing a new version of the UCITS Directive (Undertakings for Collective Investment in Transferable Securities). The Directive enables an EU single market for collective investment schemes, i.e. authorised unit trusts and open-ended investment companies (OEICs), that offer a sufficient level of protection to retail investors.
- 1.2 The new version of the Directive, which is generally referred to as UCITS IV, was passed by the European Council and Parliament in 2009 with a transposition deadline of 1 July 2011. In 2010 the European Commission published more detailed rules consisting of two implementing Directives, also for transposition by July 2011, and two Commission Regulations. The package of measures represents the outcome of an initiative, supported by a wide range of stakeholders, to improve the efficiency of the EU single market for collective investment schemes that comply with Directive requirements.
- 1.3 The changes it introduces include a new passport for management companies, a reform of the way the existing product passport works, and a new point-of-sale consumer disclosure document to provide investors with clearer and more concise information to help their decision-making.
- 1.4 In the paper, we explained that UK implementation would involve changes to primary and secondary legislation, and to our own Handbook of rules and guidance. Those changes have now been made, as a result of which the UK implemented the revised Directive by the transposition deadline. The legislative changes were made by Statutory Instrument² on 30 June 2011.

1 Transposition of UCITS IV: consultation document, HM Treasury/FSA, December 2010. Copies are available from the Treasury website.

2 The Undertakings for Collective Investment in Transferable Securities Regulations 2011, SI 2011/1613.

- 1.5 This statement summarises the feedback we received from the consultation on the matters that are the FSA's responsibility and sets out our responses to it, including where Handbook changes differ significantly from the version consulted on.
- 1.6 We received 19 responses to the paper. Respondents included the Financial Services Consumer Panel, the Financial Ombudsman Service, trade associations, the Law Society, authorised fund managers, service providers, private client asset managers, legal advisers and life assurance firms. A full list of respondents (other than one who asked for their response to remain confidential) is published in Annex 1.

Who should read this policy statement?

- 1.7 This paper will be of interest to:
- authorised fund managers (AFMs) who currently operate UK-authorised UCITS schemes or may do so in the future;
 - trustees and depositaries of UK-authorised UCITS schemes;
 - other persons that provide services to AFMs, such as third-party administrators;
 - distributors of UCITS schemes, such as platform service providers; and
 - financial advisers.
- 1.8 The paper will also be of interest to AFMs wishing to passport their services to another EEA State, and to EEA UCITS management companies that may be considering using their passport to operate a UK-authorised UCITS scheme.

Equality and diversity

- 1.9 As stated in the paper, we assessed whether any equality issues arose from our proposals. We continue to believe that our proposals, as implemented in our rules and guidance, do not give rise to any discrimination prohibited by equality legislation.

Next steps

- 1.10 The Handbook Instrument implementing our rules and guidance came into effect on 1 July 2011.

CONSUMERS

Although some aspects of UCITS IV will not affect consumers directly, the changes it brings should benefit consumers by making the funds market more efficient and generating cost savings that can be passed on to fund investors.

Key investor information will be shorter and clearer than the documents currently given to consumers before they make an investment decision. It should enable investors to compare funds more easily, and make better-informed choices that meet their needs.

Changes to the scope of the Financial Ombudsman Service and the Financial Services Compensation Scheme will mean that investors in UK-authorized funds will be able to benefit from the increased competition generated by the UCITS management company passport, without any decrease in their rights of redress if something goes wrong.

2

Feedback on consultation questions: rule change proposals

- 2.1 This chapter sets out the main details of the feedback we received on questions about the FSA's proposals, following the order of the chapters in the paper. We do not refer to feedback on the Treasury's statutory instrument, except where it is relevant to explaining our own decisions.

Simplified notification procedure

- 2.2 UCITS IV establishes a new procedure for the cross-border marketing of funds. The regulator in the host State where the fund is to be marketed loses the right to delay access for up to two months while it considers whether the marketing arrangements are compliant with national laws and regulations. Under the new process, the UCITS home State regulator will notify the host State regulator directly that the UCITS is using the product passport. Once that notification has been made, the fund may begin to access the host State market immediately. We asked:

*Do you agree with the proposed amendments to COLL?
Are there any other matters related to cross-border notification
on which the FSA should publish rules or guidance to ensure
the Directive is transposed effectively?*

- 2.3 There was relatively little comment on this section of the consultation document. One respondent urged the Treasury and the FSA to work closely with other EEA regulators to create a consistent process for carrying out the notifications. There were also comments on drafting, particularly on the new rule COLL 12.4.4.R which appeared to prescribe

two different processes, one for notifying updates to documents and the other for making changes to marketing arrangements.

Our response

An agreement has been drawn up by ESMA setting out a protocol for how notification messages are to be transmitted from one regulator to another. This should ensure that the process runs smoothly and should cut down on the number of queries from host State regulators. ESMA has undertaken initial work to develop a proposal for an IT process for secure transmission of notifications between regulators, and it is likely that this will proceed in due course. Various options are possible, including adaptation of existing systems. We have argued that the proposal should take account of the needs of firms subject to the Alternative Investment Fund Managers Directive as well as the UCITS Directive. It will be subject to cost-benefit analysis before any decision is made.

We have partly redrafted section 12.4 of COLL to make it clearer. COLL 12.4.4R now specifies that the AFM of a notified fund should communicate all updates and changes directly to the host State regulator by email. However, where one or more sub-funds of an umbrella UCITS have been notified for marketing in a certain Member State, and an additional sub-fund is also to be marketed there, AFMs should note that they must ask the UCITS home State regulator to make a new notification.

We have created a new Glossary definition of 'UCITS marketing notification' that applies to the process for notifying a UK-authorized UCITS in another Member State (including those that were notified under the old procedure). Further information about how to ask us to make such a marketing notification can be found on our website.

EEA UCITS operators wishing to access the UK market will also find relevant information on our website. This includes the list of marketing laws and regulations relevant to collective investment schemes which we are required to publish under Article 91(3) of the Directive.

Management company passport

- 2.4 In the paper, we explained that there are two aspects to implementing the Directive requirements for UCITS management companies. The first is a set of operating standards that applies to all management companies, and the second covers how those companies may passport their services into other Member States. We categorised the general operating standards under the headings of prudential and organisational requirements, conduct of business requirements, and risk management requirements.

Prudential, organisational and conduct of business requirements

2.5 We asked:

Do you agree with the proposed amendments to SYSC and SUP? Are there any other matters related to the prudential and organisational requirements for a UCITS management company on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

Do you agree with the proposed amendments to COBS and COLL? Are there any other matters related to the conduct of business requirements for a UCITS management company on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

- 2.6 Respondents generally approved of our proposal to implement the organisational and conduct of business requirements through adaptations of existing rules wherever possible. There were, however, a number of specific questions relating to some of the provisions.
- 2.7 Some respondents queried the new provisions in COBS 16 concerning the information to be reported to customers following a transaction in units. They noted that the words ‘where applicable’ which appear in the Directive had not been reproduced in the Handbook text. They also queried how the requirement to state the date and time of order receipt and the method of payment should be handled, and whether a generic statement was acceptable.
- 2.8 One respondent asked how the new rule COLL 6.6A.2R (2), implementing the requirement for the authorised fund manager not to place the interests of any one group of unitholders ahead of others, should apply where one or more platform service providers are among the unitholders. Their concern was that this rule might prevent the AFM from (for example) providing information to the platform before any other direct unitholder, so that the platform can make arrangements to pass the information on to the underlying investors who use its services.
- 2.9 One respondent queried the new record-keeping rule COLL 6.13.4R, asking in what circumstances firms would need to keep records for more than five years.

Our response

The changes to SYSC have been implemented largely as consulted on apart from some minor drafting changes, mainly to clarify the application of conflicts of interest requirements in SYSC 10. Similarly, there have been drafting adjustments but no substantial changes to chapters 2, 11 and 16 of COBS.

We have modified COBS 16.2.1R as suggested to add the words 'where applicable'. Regarding publication of the date and time of order receipt, in our view the intention of the co-legislators was to ensure that investors have evidence that their order has been executed on a timely basis having regard to the terms and conditions on which dealing services are provided. This implies that the specific date and time should appear on each contract note or confirmation where relevant; an example where the information would not be relevant is a series of contributions to a regular savings plan carried out on dates specified in advance as part of the terms of the plan. Regarding methods of payment, we think that a generic statement based on the fund's prospectus will be acceptable (for example, that the proceeds of a sale of units will be paid to the investor by cheque).

In our view, the requirement in COLL 6.6A.2R about the treatment of groups of unitholders should take account of the fact that some unitholders will be acting for a large base of underlying investors. We have recently made new rules³ introducing the concept of an intermediate unitholder who holds units on behalf of multiple beneficial owners. AFMs when complying with COLL 6.6A.2R can take account of the need for such unitholders to ensure that certain fund information is passed on to the beneficial owners in a timely manner, as long as this does not unfairly advantage the interests of the intermediate unitholder itself over those of the underlying clients, or other unitholders.

We have modified COLL 6.13.4R to clarify that firms will not have to keep the records required by this section for longer than five years unless we direct them to do so.

Risk management requirements

2.10 We asked:

*Do you agree with the proposed amendments to COLL?
Are there any other matters related to the risk management and measurement requirements for a UCITS management company on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?*

2.11 With regard to the risk management measures to be implemented through COLL, there were a number of detailed comments.

³ Section 14.4 of COBS – see PS11/9 (Platforms) published August 2011 and the Retail Distribution Review (Platforms) Instrument 2011 (FSA 2011/47).

- 2.12** It was suggested we should not delete the current paragraph (14) of COLL 5.2.11R as the issues it addresses in relation to exchange-traded derivatives are not adequately covered by ESMA guidelines. Similarly, it was suggested that paragraphs (3) and (4) of COLL 5.2.22R should be retained, even though the Commission Recommendation on which they are based is to be revoked.
- 2.13** A couple of respondents pointed out that the scope of the new rule COLL 5.2.11BR (8) appeared to be incorrect, as it should apply to all risk diversification limits and not be limited to counterparty risk exposure.
- 2.14** It was suggested that paragraph (2) of draft rule 5.3.3AR is superfluous as it would duplicate the effect of the current rule COLL 5.2.19R.
- 2.15** Some respondents queried why the new rules COLL 5.3.7R and COLL 5.3.8R do not provide for other advanced risk measurement methodologies to be used, as stated in Article 41(3) of the level 2 Directive.
- 2.16** One respondent commented on the new guidance COLL 6.11.3G and asked for it to clarify when a firm is required to maintain a permanent risk management function.
- 2.17** One respondent did not think the proposed COLL regime was appropriate as it is not aligned with requirements arising under the Capital Requirements Directive and Solvency II Directive for insurance firms.

Our response

We have made rules as consulted on, subject to the following significant changes:

- the text of paragraphs (3) and (4) of COLL 5.2.22R has been deleted and is no longer a rule, but is reproduced as guidance at COLL 5.2.22AG;
- COLL 5.2.11BR (7), which was numbered paragraph (8) in the draft, has been amended so that it refers back to all the risk diversification limits in 5.2.11R;
- paragraph (2) of COLL 5.3.3AR has been deleted and paragraph (1) redrafted to make it clearer; and
- guidance at COLL 6.11.3G has been reworded to make clear that every firm should have a risk management function, although it does not have to be functionally independent if that would be disproportionate to the firm's activities as a UCITS management company.

We have deleted paragraphs (11) to (14) of COLL 5.2.11R as proposed, since they have been superseded by the CESR / ESMA guidelines referred to in COLL 5.3.11G. We consider those guidelines to represent adequately the consensus view of EU regulators regarding derivative counterparty risk.

COLL 5.3.7R and 5.3.8R do not refer to other advanced risk measurement methodologies as may be appropriate, because no others have been considered or

approved by ESMA. If and when alternatives are developed and approved by that process we will implement them accordingly.

The COLL regime for risk management is not aligned with the Capital Requirements Directive or Solvency II Directive requirements, since these have been developed entirely separately within the EU Financial Services Action Plan. It would not be appropriate to apply concepts or terminology from one context to another in a way that was not considered by EU legislators.

Exercise of passporting rights

- 2.18 In the paper we explained how the management company passport would be implemented, and in particular how the split of responsibilities between the home State and host State regulators would be treated. We noted the difficulty of interpreting legislation that may fall to either regulator to supervise, in situations where the management company is exercising passporting rights by establishing a branch in the host State. We asked:

Do you consider that the proposed amendments to SYSC, COBS, SUP and COLL implement the split of responsibilities between the UCITS home State and the management company home State correctly? Are there any other matters related to the exercising of passport rights by a UCITS management company on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

- 2.19 There was very little direct comment on the matters covered in this section. The IMA noted that the Glossary definition of the UCITS Directive has not been updated, and suggested that alternative Glossary terms be found to refer to the two level 2 implementing Directives.

Our response

We have made a number of adjustments in the final version of the instrument to reflect our understanding of the split of responsibilities between home and host State regulators. This is based in part on further discussions between the European Commission and other Member States to try to agree a common approach to the interpretation of the Directive in this area. Where there is doubt about the correct split, we have drafted the rule to allow us the possibility to supervise and enforce it on either basis, until such time as a definitive interpretation can be achieved.

We have modified the application of rules in COBS, SUP and COLL so that a proper distinction is made between activities carried out from a branch in the host State (which are subject to the conduct of business rules of that State) and

activities carried out under the freedom to provide cross-border services, which are subject to the rules of the management company's home State regulator. COLL 6.12 (Risk management policy and risk measurement) contains rules which in this context are particularly difficult to assign between the regulator of the UCITS management company and the regulator of the UCITS itself. We have added guidance to several parts of this section to explain how we think the rules should be interpreted. However, firms wishing to make use of the management company passport, whether coming into the UK or passporting out to another Member State, should note that in practice much will depend on the approach of the two regulators involved in agreeing an effective split of oversight responsibilities on this matter, as on others.

We have removed material from COLL 6.6.15R on delegation by management companies and placed it in a new rule COLL 6.6.15AR. This is to reflect the fact that delegation by a UCITS management company is the responsibility of that company's home State, whereas the other matters in COLL 6.6.15R fall to the FSA as regulator of the UCITS scheme itself.

We have updated the Glossary definition of the UCITS Directive, but we have not changed the terms for the two implementing Directives since no conveniently short title could be found as an alternative.

- 2.20 We noted that the introduction of the management company passport has implications for the depositary of a UCITS scheme, and asked:

Do you agree with the proposed amendments to COLL in relation to the duties of the depositary when dealing with an EEA UCITS management company? Are there any other matters related to the general responsibilities of the depositary on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

- 2.21 Again, there was relatively little comment on these questions. The IMA and DATA both commented on the required content of the agreement between a depositary and an EEA UCITS management company in relation to responsibility for anti-money laundering controls. They asked for clarification that the depositary does not have responsibility for this matter.

Our response

We do not consider that references to depositaries in the context of anti-money laundering controls create any obligation for depositaries to have oversight of such controls. It is for the parties to the agreement to determine who is responsible for what, so there is no reason for depositaries to change their current approach unless they choose to do so.

Rights of redress for investors

- 2.22 We explained in the consultation document that the introduction of the management company passport affected the scope of the UK's consumer redress mechanisms, the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). We proposed to apply our complaints handling rules in DISP to UK branches of EEA UCITS management companies (except for the data publication requirements) and to require EEA UCITS management companies to comply with our complaints reporting rules when providing cross-border services in the UK. We asked:

Do you agree with the proposed changes to DISP to implement the complaints-handling requirements of UCITS IV?

- 2.23 The Consumer Panel supported our proposals, saying that retail investors should be able to exercise their right to complain regardless of where the management company is based. They were concerned that investors should have easy access to information about where the management company is located before making a complaint.
- 2.24 Few other respondents commented on this point, but those that did supported our proposals.

Our response

We continue to believe that it is important to adapt our redress regime in the light of the UCITS management company passport, to provide a consistent and credible investor protection regime. We are pleased that the Consumer Panel has confirmed its support for this principle. We have implemented these measures as proposed, subject to some minor drafting changes in the text of DISP.

- 2.25 We then set out various scenarios showing how we might extend the right of eligible complainants to refer a complaint to FOS, in situations where the management company passport is being exercised by an incoming EEA firm in the UK or by a UK firm operating a UCITS in another Member State. We asked:

Do you agree that FOS referral rights should be available in respect of complaints by eligible complainants where the UCITS scheme is FSA authorised, irrespective of the location of the management company or the type of passport it is using?

Do you think FOS referral rights should continue to be available for complaints by eligible complainants against a UK management company operating an EEA UCITS authorised in another Member State via a cross-border services passport?

Do you think FOS referral rights should be available for complaints by eligible complainants against a UK management company operating an EEA UCITS authorised in another Member State via a branch passport?

- 2.26** The Consumer Panel was in favour of each of these proposals. It noted that if co-operation between supervisors is not sufficient to enforce FOS awards, the Treasury and the FSA should explore other options to achieve effective redress for retail investors. It also advocated the development of alternative dispute resolution mechanisms in all Member States, covering all sectors, so that there would be minimum standards applying to both home and host State activities.
- 2.27** The FOS response supported the overall policy objective but expressed significant concerns about the proposals to extend coverage to EEA management companies providing cross-border services in the UK, and UK firms operating from a branch established in another Member State. It stated that its current scope is easy to explain to consumers and fits in with existing cooperative arrangements with other EU financial ombudsmen. It might not be practical to make EEA firms, passporting under the freedom to provide cross-border services, cooperate with investigations or pay awards made against them. That risks misleading investors who buy funds operated by those companies under the assumption they would be protected if anything went wrong.
- 2.28** The FOS also considered that the proposal to include the activities of non-UK branches of UK firms could have significant unintended economic consequences and would increase pressure to extend its scope in the same way in relation to other activities, such as banking and insurance.
- 2.29** Of the few other respondents that commented on these proposals, there was general support for the first two, although the IMA raised concerns about whether EEA firms would be required to pay the relevant levies. It was concerned that the effects would be anti-competitive on UK firms if incoming EEA firms did not meet their share of the costs. Other respondents did not support the third proposal relating to EEA branches of UK firms. One respondent thought that investors in the host State should deal with the matter through the national dispute resolution mechanism in that State.

Our response

Since there was no support for any reduction in FOS referral rights, the existing rules will continue to apply to both a UK UCITS management company providing cross-border services in another EEA State, and an EEA UCITS management company operating from a branch established in the UK.

Where an EEA UCITS management company is to operate a UK-authorised UCITS scheme under the freedom to provide cross-border services, we consider that

the case for providing FOS referral rights remains strong. In this case, the consumer is investing in a UCITS scheme that has been authorised by the FSA. Not to provide FOS referral rights would mean that some FSA-authorized UCITS schemes would attract referral rights and some would not, dependent on where the management company was authorised – an undesirable situation. We have decided to proceed with this proposal.

Where a UK UCITS management company is to operate EEA UCITS schemes from a branch established in another Member State, we consider the case for providing referral rights to be weaker. We agree that an investor in another Member State, who buys units in a UCITS authorised in that State, is more likely to look to the regulatory system of that State for redress if something goes wrong. Consequently, we have decided not to proceed with this aspect of the proposal.

We believe that our rules are fair to UK firms that pay the levy to meet FOS costs, as incoming management companies will be treated on the same terms, apart from an exemption from publishing complaints-handling data. We do not think the change will make it harder for investors and other stakeholders to understand the scope of the FOS. If we had not made this change, it would have been harder to explain to retail investors that they might not necessarily have rights of redress in relation to a fund authorised by the FSA. We will work closely with the FOS to ensure that any EEA firms wishing to operate UK authorised UCITS schemes are made aware of their responsibilities and are ready to cooperate with UK requirements. There is guidance in COLL 12.3.7G and on our website to remind EEA firms of this obligation. We are prepared to use the rights and powers of supervisory cooperation to achieve our intended outcomes in this area.

- 2.30** Regarding the availability of compensation if the management company of a UCITS should be in default, we proposed that the FSCS should be able to provide coverage where the UCITS scheme concerned is authorised by the FSA. This would mean that EEA UCITS management companies operating UK schemes would become liable to contribute to the FSCS levy in relation to that coverage. We asked:

Do you agree with the proposal that the FSCS should provide compensation coverage where valid claims arise from the default of a management company (irrespective of its home State), if the claims relate to an FSA-authorized UCITS scheme? If not, what do you think the scope of FSCS coverage should be?

- 2.31** Relatively few respondents commented specifically on this point, but most of those who did (including the Consumer Panel) supported the proposal. The IMA questioned whether the measures might have anti-competitive effects for UK firms. Another response said that, since the UCITS Directive framework already provides a high degree of investor protection, the extra cost of these proposals would provide little benefit in return.

Our response

As explained above in relation to the FOS, we are confident that our proposals will not have an adverse effect on UK firms who pay their share of the FSCS levy. We agree that the impact of a UCITS management company's default should be relatively low on most of the fund's investors, thanks to the other protections provided by the UCITS Directive and the UK regulatory requirement preventing a manager and a depositary from being part of the same group. Nevertheless, we think it is right that investors in UK-authorised funds should be treated consistently in this regard, so we will proceed with our proposal.

Investor disclosure

2.32 The UCITS IV changes to investor disclosure relate mainly to the replacement of the simplified prospectus by the key investor information (KII) document. The Directive also introduces the term 'marketing communication' and places certain disclosure requirements on firms that issue such communications.

2.33 We explained in the consultation document that we were not consulting on the form and content of the KII document because a Commission Regulation prescribes those elements.⁴

2.34 This section of the consultation drew the biggest response and nearly all respondents commented on it to some degree. We asked:

Do you agree with the proposed amendments to COLL? Are there any other matters related to producing the key investor information document on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

2.35 The Consumer Panel has supported the concept of the KII document since its early stages, but suggested that a programme of post-implementation monitoring and research should identify any need for further rules and guidance at EU level. The Panel also suggested that more should be done to raise consumers' awareness of the differing levels of compensation available in different Member States, as in their view this can be an important factor when consumers make investment decisions.

2.36 Trade associations and firms were also supportive of the objectives of moving to key investor information, but had some concerns that the Directive would be inconsistently implemented by Member States. That could result in differing interpretations, with management companies in some States being unduly restricted. These respondents urged the Treasury and the FSA to keep as closely to the text of the Directive as possible to avoid such inadvertent problems.

⁴ A Commission Regulation is directly applicable and does not need to be transposed into the law and regulation of Member States.

- 2.37 A number of respondents had questions of detail concerning the Commission Regulation and the related CESR guidelines on technical matters, such as the methodology for producing the synthetic risk and reward indicator that forms part of the document.

Our response

We agree with the Consumer Panel that the effectiveness of key investor information needs to be properly reviewed once it has been fully implemented and when both product providers and distributors have sufficient experience of preparing and using it. The UCITS Directive requires the European Commission to carry out a post-implementation review of all the UCITS IV measures in two years' time, which will be a suitable opportunity. We will support the use of consumer testing and other methods of ensuring that the views and experiences of investors are fed into any future review process. We also welcome independent studies and analysis, by industry professionals or academics, that will provide evidence of the effectiveness of the document. The European Commission's work on disclosure requirements for retail investment products, referred to in paragraph 2.72 below, may result in consequential changes to the UCITS KII regime.

We agree that consistent implementation is necessary to achieve comparability between KII documents, which is one of the main regulatory objectives. The Treasury and the FSA have sought to reflect the text of the Directive as closely as possible in UK law and regulation. We do not think we should give our own interpretations of what the Directive means by providing additional Handbook guidance in this area.

For the same reason, we have not commented further on the various guidelines issued by CESR and ESMA. We are aware that some industry participants have objections to, or concerns about, some elements of the methodologies for calculating the synthetic risk-reward indicator (SRRI) and the ongoing charges figure required as part of KII, but we think it is essential that at this stage everyone follows these methodologies consistently. Any changes need to be agreed by ESMA and that will only be possible if there is sufficient evidence from across Member States of problems with the agreed methodologies.

- 2.38 We asked:

Do you agree with the proposed amendments to COBS and COLL? Are there any other matters related to providing the key investor information document or marketing communications on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

- 2.39** Trade associations (notably the IMA and APCIMS) and several firms made a number of points about the requirements for providing the KII document to investors.
- 2.40** They thought the requirement to provide the document when an investor makes a top-up transaction would be burdensome. The AFM would not know if the investor had received the most up-to-date version or not, and in any case the document would be unlikely to have changed much except for an updated past performance record. Some were concerned that a customer in a regular savings arrangement would have to be provided with a KII document before each periodic transaction.
- 2.41** Discretionary investment managers objected that the rules, as drafted, would force them to provide a KII document to clients before buying units in a UCITS for them. They said that this was unnecessary as the investor has already given them a mandate to provide an ongoing service and does not expect to receive pre-sale disclosure documents for individual transactions. To do so would be costly for firms and would probably trigger complaints from customers.
- 2.42** Several respondents highlighted the particular difficulties with certain types of execution-only transaction. The rules no longer give an exemption to allow the KII document to be provided after an investor has given instructions for a transaction at a distance – that is, using post, telephone, email or other electronic media. Firms were concerned about whether they have to ensure that the investor is provided with a KII document before they process the transaction. Doing so would be likely to cause delays that might result in missed opportunities or a loss of value to the investor. Such investors are typically knowledgeable enough to understand the aims, risks and features of their preferred fund and might complain if they have to wait to receive a document containing information they already know.
- 2.43** Where payment is provided at the time of the request, there will be a problem whether to return it or hold it in a client money account (assuming the firm has the necessary permission to do so). Similarly, there will be a problem with fund switches if investors have not received the KII document for the fund they want to switch into. Respondents suggested the AFM would have to delay the processing of the redemption in such cases, which might result in losses to the investor.
- 2.44** There were a number of questions about whether it would be sufficient in such circumstances to provide a KII document by electronic means. Some firms were concerned that it would not be acceptable to direct an investor to a KII document published on a website, or that an investor dealing by telephone might object if asked to do so. Some thought that even sending customers an email, inviting them to look at the KII document on a website before proceeding with the transaction, might cause dissatisfaction and trigger complaints.
- 2.45** Respondents who raised these issues stressed the need to find solutions that would minimise any detriment to investors. They said that in many cases investors are quite clear about what they want to do and would not benefit from receiving additional disclosure

about their chosen fund before making the transaction. They urged that, insofar as possible given the constraints of the legislation, we should take a pragmatic approach and recognise the need for flexibility, especially during the transition from the simplified prospectus.

- 2.46** Some thought there was a more general problem in requiring KII to be provided to institutional investors, and suggested an exemption could be given where a person is dealing on someone else's behalf.
- 2.47** Fund supermarkets were cited as an example where clarification of the application of the rules would be helpful. Some people asked whether it is still possible for fund supermarkets and other providers to produce compendium disclosure documents for several or many funds, even though the specific exemption in COBS 14.2.11R will no longer apply to UCITS schemes.
- 2.48** One respondent asked for clarification of the timing of delivery of the KII document by a person other than the AFM, as this was not specified in the draft COBS rule. Another asked for clarification that AFMs do not have to monitor the compliance of intermediaries with the requirement to provide a KII document to their clients.
- 2.49** One respondent suggested that there should be a 'national storage mechanism' online to allow all KII documents to be uploaded electronically and made freely available to all enquirers. This would greatly simplify the process of obtaining copies, especially for intermediaries.
- 2.50** The proposal to require information about complaints, compensation and cancellation arrangements in a separate document, to be provided at the same time as the KII document, drew some comment. Although respondents generally supported our proposal not to specify the format of such a document, one respondent could not see why separate disclosure was needed at all and suggested the material be covered in the KII document. There were also requests to clarify what firms might call the document, and whether it has to be available on a website alongside the KII document.
- 2.51** The IMA raised the issue of distribution in countries outside the EEA, and whether concessions could be given to AFMs not to provide a KII document where local laws and regulations prescribe a different type of pre-sale consumer disclosure.
- 2.52** A number of respondents expressed concerns about the effects of the 12-month transitional period until 30 June 2012, during which the simplified prospectus can still be used as the pre-sale disclosure document for UCITS transactions. They said that this would be operationally inconvenient and burdensome for firms, and confusing for investors who might receive a mixture of document types when enquiring about possible investment choices. One respondent asked for more clarity about the requirement to publish the SRRI in the fund's report and accounts during the transitional period. The IMA noted that the draft transitional provision did not reflect the guidelines published by CESR in December 2010.

- 2.53 This last issue was also linked to the question of whether key investor information could be provided for a non-UCITS retail scheme (NURS), which is addressed separately below.
- 2.54 A number of respondents suggested that the term ‘marketing communication’ should be defined as there was too much ambiguity about whether some or all financial promotions for UCITS schemes fall within its scope. We were specifically asked whether the rule applies to the KII document itself, and whether factsheets for professional investors and personal recommendations to invest in a UCITS scheme following a suitability assessment would be covered.

Our response

It is a principle of the revised UCITS Directive that every investor should receive appropriate information about a fund before making a decision to invest in it. We cannot oblige investors to read that information, still less act on it, but we believe that in the long term better outcomes will be achieved if everyone is given the opportunity to do so. We also believe that firms should regard the KII document as an integral part of any promotion of a UCITS, not just a regulatory ‘add-on’. A clear and well-written KII document could in fact enhance the quality of the selling process.

It is important for firms to understand that the KII regime is intended to produce the same quality of information and level of investor protection regardless of who the investors are, what type of transaction they are undertaking, and what channel of distribution they use to access the fund. For that reason, there is no exemption in the UCITS Directive of the kind provided under the Distance Marketing Directive that allows a firm to provide post-sale information to a customer undertaking a transaction at a distance. Firms that have relied on this type of exemption for their business model to work effectively will have to consider carefully how they can adapt the way they do business without unfairly disadvantaging customers.

Regarding specific issues about KII delivery, we have allowed an exemption in COBS 14.2.9AR, as we proposed, so that a firm does not have to provide a KII document to an investor for a top-up transaction, if the investor already has an up-to-date version of the document. We would not regard a minor change to the document – for example, a change of branding or design – as rendering it out-of-date. However, any change to the information about the fund itself, including an updated past performance record, may affect the investor’s decision so it is important that they receive the current version of that information before the transaction takes place.

We have also added a provision to COBS 14.2.9AR to clarify what happens when an investor makes regular contributions, such as via a monthly savings plan. This can be regarded as a single investment decision, so a KII document should be

provided only once, before the client makes the decision. There is no obligation to reissue the KII document to every regular savings investor each time it is updated. We have added guidance at COBS 14.2.10G (2) as to what kinds of variation of a savings plan would constitute a new transaction requiring an up-to-date KII document to be provided in advance.

We have added a new paragraph (1) to COBS 14.2.9AR, which allows a firm, instead of providing a KII document to the investor, to provide it to a person who has written authority to make investment decisions on the investor's behalf. This will assist investment managers operating a discretionary managed portfolio for clients, as they will not be required to pass on KII documents to the clients before buying units in a UCITS scheme for them. It will also apply where a person holds a power of attorney or has been appointed a deputy for the investor by the Court of Protection.

We have some sympathy with firms who, when asked by retail customers to carry out execution-only transactions for them, are obliged first to provide KII documents in situations where the customer is indifferent to the disclosure, or objects to having to receive it before proceeding. A regulation that exists to protect the majority of investors may inconvenience the minority who have taken the care to inform themselves fully and whose confidence in their own judgement is not misplaced.

We think it is likely that some execution-only investors will not in fact have seen a sufficiently full and balanced presentation of information to make a well-informed judgement. They may be relying on fund factsheets, advertising, media coverage or limited personal research for their choice of fund. To that extent the requirements of the Directive are justified, but in the final analysis we have to implement the Directive as it is written, whether or not we think there might have been good reasons to treat some investors differently.

Firms carrying out execution-only business will have to determine how this delivery requirement can be accommodated in their procedures. Where investors are willing to carry out electronic transactions, either by using an online dealing facility or by giving email instructions, it is reasonable to arrange to provide them, before they invest or switch, with KII documents in a durable medium other than paper or via a website that meets the necessary conditions. In other cases, firms may have to consider changing procedures or terms and conditions to discourage investors from making new investments in a UCITS scheme without having first obtained information about it.

Regarding provision of key investor information to institutional investors, the Directive gives no exemption so we cannot implement one on our own initiative. We suggest AFMs should, where appropriate, use the right to provide an electronic version of the KII document. Institutional clients may find it simpler to go to the AFM's website to avoid the need for paper versions of KII to be issued repeatedly.

Fund supermarkets and other platform service providers, to the extent that they are selling or arranging the sale of units to an underlying client, may be obliged to provide a KII document directly to an investor (if the investor's financial adviser has not already done so). It is important that platform providers recognise the need for investors to receive a KII document and play their part in facilitating its delivery. However, it is equally important that AFMs carefully plan the transition of their range of funds to KII and consider the capacity of the firms they rely on for distribution to handle the change. AFMs will need to ensure distributors are made aware of when and how the KII will be introduced and be made available to them, so they in turn can provide it to investors.

Regarding compendium documents, a booklet in which KII for several funds is grouped by subject matter (for example, all the investment objectives listed in one section and all the charges figures in another) is not permissible. It is, however, acceptable to place multiple KII documents into a single folder or booklet, as long as the KII of each fund or sub-fund retains its prescribed two (or three) page format. This may be helpful if firms wish to present the sub-funds of an umbrella UCITS together. The principle is for the presentation as a whole to be clear and easy to follow. If investors are likely to be put off reading a fund's KII by the size of the booklet and the difficulty of locating one particular fund among many, then in our view the booklet will not be compliant.

We have added a new paragraph (3) to COBS 14.2.14R to clarify that where any firm is required to provide a KII document to an investor, it must do so in good time before the client's transaction. This therefore applies to distributors and advisers as it does to AFMs. An AFM is not responsible for ensuring another firm complies with this rule unless the other firm is acting as a delegate of the AFM. The suggestion of a 'national storage mechanism' is foreseen in the Directive recitals. It is reasonable in principle that KII documents should be stored electronically so that they can be accessed as easily as possible by firms and investors. National regulators would have to commit money and expertise to develop and maintain a facility to enable this. We understand that in some Member States, such a database is being created by industry participants instead. We have no current plans to develop such a mechanism.

The KII contents are prescribed by an EU Commission Regulation, which does not refer to subjects such as complaints handling, compensation arrangements or cancellation rights. This means that AFMs cannot cover them in KII, so we have added the requirement to provide the information specified in COBS 13.3.1R (2) alongside the KII document. This additional information should not be presented under the title of 'key investor information', although it should be in a format that is sufficiently clear and prominent to catch the attention of retail investors. It will be helpful to retail investors if firms providing the information electronically make it available in the same part of their website as the KII document itself. This is an FSA requirement in relation

to matters outside the scope of the UCITS Directive, so we have decided it should not apply where the fund is being marketed only to institutional investors.

We are unable to provide any exemption in relation to the marketing of UCITS in countries outside the EEA. Firms must provide a KII document to investors in those countries in addition to any pre-sale disclosures required by local laws and regulations.

A 12-month transposition period has been allowed in the UK for the introduction of key investor information. We acknowledge that in the short term this increases the risk that some investors might be confused or put off by being given or offered differing types of disclosure documents. We also recognise that firms, especially those involved in distributing the funds of multiple AFMs, face difficulties in handling the different formats and delivery requirements during this period, but that is a consequence of allowing AFMs flexibility over when they introduce KII documents in order to manage their transition costs.

We have amended the transitional provisions in COBS and COLL to take account of CESR's guidelines as they relate to new funds, new sub-funds of existing umbrella structures, and new unit classes. We have also modified the transitional rule on publishing the SRRI in managers' reports, so that it will not come into force for any accounting period unless a KII document for the fund has already been published during that period.

Regarding marketing communications, we have clarified the application of these requirements by moving them to a separate section (COBS 4.13). We have also added material about the interaction of the term with the concept of a financial promotion, since not all marketing communications will be financial promotions. Image advertising is not a marketing communication, nor is any document that is required to be offered or provided to investors under the Directive, such as the prospectus, KII document or reports and accounts. We do, however, consider that factsheets fall within the scope of the term, even if they are intended only for institutional investors. Also, where an adviser recommends an investment in units of a UCITS, any information about the fund itself will be a marketing communication and should comply with any relevant rule in COBS. Given these changes, we do not think it is necessary to add a definition of a marketing communication to the Glossary.

Master feeder structures

- 2.55 UCITS IV introduces the ability for a UCITS to operate as a feeder fund, investing substantially all its assets in units of another UCITS – the master fund. The Directive prescribes what investment powers a feeder UCITS has and what arrangements have to be

put in place between the feeder and its master. It specifies in detail what information has to be given to unitholders when they first invest, when periodic reports are published and when certain kinds of changes occur affecting either fund. We asked:

*Do you agree with the proposed amendments to COLL?
Are there any other matters related to the general provisions for master-feeder arrangements, disclosure of master-feeder arrangements, the investment powers of feeder UCITS, changes to the master affecting feeder UCITS, and suspension of dealing, on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?*

- 2.56** Most respondents did not comment in detail on this chapter of the consultation. Those that did, while generally supportive of our approach, made a number of points about the proposed additions to COLL, as follows.
- 2.57** Some respondents did not agree with our proposal in COLL 4.3.11R for how the AFM of a feeder UCITS should deal with changes to a master UCITS. They were concerned that AFMs would not be able to comply with the rule in cases where the operator of the master UCITS fails to give them sufficient notice of a change before it comes into effect. They doubted whether our suggestion, that in such cases the AFM should apply for an individual rule waiver or modification, would be practical.
- 2.58** Respondents also had concerns about the draft rule COLL 11.3.14R, which regulates how the AFM of a master UCITS with non-feeder unitholders should balance their interests against those of the feeder UCITS. They thought our proposal would be too burdensome and costly for the operator of the master fund.
- 2.59** It was suggested that a specific rule was unnecessary on retaining a prudent spread of risk in the portion of a feeder not invested in the master fund.
- 2.60** One respondent commented that COLL 11.5.6R was too broadly drafted. The rule would require the AFM of a UCITS scheme (whether a feeder or a master) to monitor the fund's auditor to ensure it is complying with its duties to share information with the auditor of the other fund that is party to the arrangement.
- 2.61** There were a number of detailed drafting comments and requests for additional guidance on certain points – for example, draft rule COLL 11.3.8R (11.3.7R in the final version) which requires the AFM of a feeder UCITS to monitor the activities of its master.

Our response

We have amended COLL 4.3.11R to make it less burdensome, by removing the strict obligation to comply with the time limits in the standard rules on fund changes. Instead, we have said that the AFM of the feeder must comply with those rules as soon as reasonably practicable after it has been informed of the relevant change. We have provided additional guidance on how to classify such changes.

As a result, where a change to the master fund affects the feeder fund in a way that needs to be voted on by the unitholders of the feeder, the vote can take place after the change has come into effect if there was not enough time to arrange for it to take place beforehand. Similarly, advance notice to feeder investors of a significant change to the master UCITS can be shortened where necessary. We believe these changes strike a better balance between protecting the interests of the feeder's investors and sparing the AFM from undue burden, while avoiding the need for the AFM to apply for a waiver as a matter of course.

In the same vein, we have amended draft rule COLL 11.3.14R (11.3.13R in the final version) to make it less burdensome for AFMs while maintaining the intended degree of protection for investors in the master fund. The rule now requires the AFM to consider whether not making information available to investors (other than feeder UCITS) would unfairly prejudice the interests of those other investors. It allows the AFM to notify such matters in an appropriate manner and timescale; guidance is provided on what might be appropriate in such cases.

We have retained the rule on prudent spread of risk (COLL 5.8.5R), since without it we would still have to qualify the general rule on risk-spreading to explain its application to feeder funds.

We have modified COLL 11.5.6R so that the AFM's obligation is only to ensure that the terms on which the fund auditor is appointed require it to comply with the obligations of section 11.5 of COLL. This removes any suggestion that the AFM must carry out ongoing monitoring of the auditor.

We have responded to many of the detailed drafting points, but have generally refrained from providing guidance on rules that transpose Directive obligations. This is because we do not think it is desirable to offer interpretations in this area that could be seen as 'gold-plating', in the absence of any agreed approach among EEA regulators.

Mergers

- 2.62 The UCITS IV measures introduce a harmonised process for fund mergers to enable UCITS established in different Member States to be merged.⁵ The measures specify, amongst other things, the categories of information that should be provided to investors in each fund involved in the merger operation before it takes place. We asked:

*Do you agree with the proposed amendments to COLL?
In particular, do you agree that the Directive regime should not be applied to mergers of UCITS schemes that are outside the scope of the Directive? Are there any other matters related to UCITS mergers on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?*

- 2.63 Most respondents did not comment on this chapter, and those that did focused on the following matters.
- 2.64 There was general support for our proposal that the UCITS merger regime should not be applied to UCITS schemes in mergers outside the scope of the Directive.
- 2.65 Some respondents noted that a UCITS merger involving an OEIC would require approval only under the new Regulation 9, whereas a merger involving an authorised unit trust would still need to be approved by the FSA under section 251 of FSMA as well as Regulation 9.
- 2.66 Respondents commented on the rule requiring AFMs to provide merger information to unitholders of the receiving UCITS in a durable medium, and asked why an exemption until the end of 2013 had not been provided, as allowed for by the Directive.
- 2.67 There were questions about the ban on charging legal, advisory and administrative costs of the merger to the fund, and whether this meant that other types of merger costs might be taken from the fund.

Our response

We have implemented the merger regime as we proposed, so that it does not affect UCITS mergers outside the scope of the Directive (that is, mergers involving only UK UCITS schemes that are not passported into other Member States).

The Statutory Instrument has been amended so that applications for FSA approval of a merger of an AUT can be made under Regulation 9 alone.

A new transitional provision has been added to COLL, which will allow the AFM of the receiving UCITS in a UCITS merger to provide information to unitholders

⁵ It also applies to mergers between two or more UCITS established in the same Member State, in cases where at least one of the funds uses the product passport to market its units in another Member State.

by publishing it in an appropriate manner – this lasts until the end of 2013. We have added guidance on what we consider ‘an appropriate manner’ to be. It may include publication on a website or in the national press, provided the method used is consistent with how the AFM makes other types of information available to unitholders.

We understand the Directive’s intention to be that no costs relating to a merger should be borne by the fund, except in the case of a self-managed investment company. We have provided for this in COLL rules because a cross-border UCITS merger may involve such a company. The costs of rebalancing the portfolio should as a general principle be regarded as part of the merger operation and so be borne by the AFM. However, it is not always easy to categorise a particular transaction as part of a rebalancing exercise rather than normal scheme management activity, so there has to be a degree of discretion in the application of this rule. We would expect the draft terms of merger to explain how any rebalancing will be handled. AFMs and depositaries should monitor the level of charges borne by the affected funds, both before and after the merger is carried out.

Improved supervisory cooperation

- 2.68 We explained in the consultation document that we did not propose any additional rules or guidance specifically to implement the Directive measures relating to cooperation between EEA supervisory authorities. We asked:

Do you agree with our proposed approach? Are there any other matters related to supervisory cooperation on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

- 2.69 We did not receive any specific comments on this section.

Other issues

- 2.70 In the joint paper we noted that consequential changes would be made to DEPP and other sections of the Handbook. We consulted on further consequential changes in Chapter 9 of Quarterly Consultation Paper (CP) No. 28.⁶ Those respondents who replied to the question in that CP approved the consequential changes without further comment, other than proposing minor drafting changes.

⁶ CP11/7 published April 2010.

- 2.71 We also said that we were considering making changes to the regime for NURS to bring it into line with the UCITS IV regime. We asked:

What are the key issues the FSA should consider in deciding whether to apply requirements of the UCITS Directive to other types of UK-authorised funds?

- 2.72 There was wide support for the idea that AFMs should be allowed to introduce the KII document for their NURS funds. Several respondents said this would benefit customers, who would receive information in a consistent format, and it would simplify administrative processes for the firm. They noted that the European Commission has said it intends to publish proposals for new consumer disclosure rules for ‘packaged retail investment products’ (PRIPs) which are likely to be based on the key investor information model. Differing views were expressed about whether we should attempt to introduce a single disclosure regime for NURS ahead of any decisions at EU level on PRIPs as a whole.
- 2.73 Some respondents also welcomed the idea that other aspects, such as master-feeder arrangements, could be extended to NURS.

Our response

We have proceeded with the consequential changes consulted on in CP11/7, subject to minor technical amendments.

We agree that it would be beneficial to AFMs of NURS to be able to opt in to providing KII documents to investors in those funds. For firms which operate both UCITS and NURS, it may be more convenient for customers and more practical for the firm to use the same document type for the whole range. We have separately published a modification by consent of COBS and COLL to allow the use of a KII document for a NURS. AFMs can make use of it by notifying our waivers team in writing (see our website for further details). Once an AFM has taken up the modification, all other firms distributing or advising on that fund must also use the KII instead of the former disclosure document (simplified prospectus or key features document), although they can rely on the modification without having to contact us first.

AFMs making use of the modification should be aware that special rules apply to any NURS that have a significant exposure to immovable property. The KII document for such funds must not include an SRRI, as the methodology for calculating the figure is not designed to reflect the risks of property as an asset class.

We considered whether to require all AFMs of NURS to cease using the simplified prospectus by a certain point, but have not done so. We think it would be better to await the publication of the European Commission’s PRIPs proposals,

which may modify the KII format for NURS. We do not want to impose the UCITS disclosure format on all NURS, only for it to change again within a short space of time to comply with PRIPs legislation.

We are continuing to work on applying other aspects of the UCITS Directive to the NURS regime and will consult on proposals in a future Quarterly Consultation Paper.

Compatibility statement and cost-benefit analysis

2.74 We asked:

Do you have any comments on the FSA's compatibility statement or cost-benefit analysis?

2.75 We did not receive any comments on these items.

Our response

We consider that the CBA we published in the paper is unchanged as a result of the feedback we received. The main policy change made as a result of feedback is the decision not to require EEA branches of UK UCITS management companies to be subject to the jurisdiction of the FOS and FSCS. We think this change is neutral in terms of costs and benefits.

The feedback identified a number of rules that would have had unintended consequences resulting in additional costs for firms, as explained in the preceding commentary. Where possible we have redrafted those rules in a way that achieves our original purpose while removing the burden identified by respondents. However, we have not identified any new sources of cost, nor do we have any additional data to indicate that the cost estimates we made previously are incorrect.

We also consider that the compatibility statement we consulted on is unchanged as a result of the feedback received and the modifications made to our rules and guidance in the light of it.

Annex 1

List of non-confidential respondents

Alternative Investment Management Association

APCIMS

Charles Stanley & Co Ltd

Depositary and Trustee Association

Eversheds LLP

Financial Ombudsman Service

Financial Services Consumer Panel

Hargreaves Lansdown Asset Management Ltd

HSBC Bank plc

International Financial Data Services

Investment Management Association

Killik & Co

The Law Society of England and Wales

M&G Group

Rensburg Sheppards Investment Management Ltd

Royal Bank of Scotland Group

St James's Place Group

Wesleyan Assurance Society

Appendix 1

Made rules (legal instrument)

UCITS IV DIRECTIVE INSTRUMENT 2011

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(4) (Miscellaneous ancillary matters);
 - (c) section 145 (Financial promotion rules);
 - (d) section 156 (General supplementary powers);
 - (e) section 157(1) (Guidance);
 - (f) section 213 (The compensation scheme);
 - (g) section 214 (General);
 - (h) section 226 (Compulsory jurisdiction);
 - (i) section 247 (Trust scheme rules);
 - (j) section 340 (Appointment); and
 - (k) section 395 (The Authority’s procedures);
 - (2) paragraph 13(4) (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme) to the Act;
 - (3) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (4) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 July 2011.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B

General Provisions (GEN)	Annex C
General Prudential sourcebook (GENPRU)	Annex D
Prudential sourcebook for UCITS Firms (UPRU)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Supervision manual (SUP)	Annex G
Decision Procedure and Penalties manual (DEPP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Compensation sourcebook (COMP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Regulated Covered Bonds Specialist sourcebook (RCB)	Annex L
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex M

Material outside the Handbook

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

Notes

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

Citation

- G. This instrument may be cited as the UCITS IV Directive Instrument 2011.

By order of the Board
1 July 2011

Annex A

Amendments to the Glossary of definitions

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

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

<i>AFM</i>	<i>authorised fund manager.</i>
<i>collective portfolio management</i>	in relation to a <i>management company</i> , the activity of management of <i>UCITS schemes</i> , <i>EEA UCITS schemes</i> or other collective investment undertakings not covered by the <i>UCITS Directive</i> that the <i>firm</i> is permitted to carry on in accordance with article 6(2) of the <i>UCITS Directive</i> . This includes the functions mentioned in Annex II to that directive.
<i>counterparty risk</i>	(in <i>COLL</i> and in accordance with article 3(7) of the <i>UCITS implementing Directive</i>) the risk of loss for a <i>UCITS</i> resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow.
<i>cross-border UCITS merger</i>	(in <i>COLL</i> and in accordance with article 2(1)(q) of the <i>UCITS Directive</i>) a <i>UCITS merger</i> of two or more <i>UCITS</i> : <ul style="list-style-type: none"> (a) at least two of which are established in different <i>EEA States</i>; or (b) established in the same <i>EEA State</i> into a newly constituted <i>UCITS</i> established in another <i>EEA State</i>; but at least one of which is established in the <i>United Kingdom</i> .
<i>domestic UCITS merger</i>	(in <i>COLL</i> and in accordance with article 2(1)(r) of the <i>UCITS Directive</i>) a <i>UCITS merger</i> between two or more <i>UCITS schemes</i> in relation to which a <i>UCITS marketing notification</i> has been made in respect of at least one of the relevant <i>schemes</i> .
<i>EEA key investor information document</i>	a <i>document</i> that: <ul style="list-style-type: none"> (a) relates to an <i>EEA UCITS scheme</i>; (b) Complies with the requirements of the <i>KII Regulation</i>; and (c) is provided in a language stipulated by article 94(1)(b) of the <i>UCITS Directive</i>.
<i>EEA UCITS scheme</i>	a <i>collective investment scheme</i> established in accordance with the

	<i>UCITS Directive</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>feeder UCITS</i>	(in accordance with article 58(1) of the <i>UCITS Directive</i>): <ul style="list-style-type: none"> (a) a <i>UCITS scheme</i> or a <i>sub-fund</i> of a <i>UCITS scheme</i> which has been approved by the <i>FSA</i>; or (b) an <i>EEA UCITS scheme</i> or a <i>sub-fund</i> of an <i>EEA UCITS scheme</i> which has been approved by the <i>competent authority</i> of the <i>UCITS Home State</i>; to invest at least 85% of its assets in the <i>units</i> of a single <i>master UCITS</i> .
<i>fund application rules</i>	(in <i>COLL</i> and <i>SUP</i>) the <i>rules</i> set out in <i>COLL</i> 12.3.5R (<i>COLL</i> fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a <i>UCITS scheme</i> and that an <i>EEA UCITS management company</i> must comply with when acting as the <i>operator</i> of the <i>UCITS scheme</i> , whether from a <i>branch</i> in the <i>United Kingdom</i> or under the freedom to provide <i>cross border services</i> , as required by article 19(3) of the <i>UCITS Directive</i> .
<i>key investor information</i>	key information for investors on the essential elements of a <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> , as detailed in article 78 of the <i>UCITS Directive</i> and in the <i>KII Regulation</i> .
<i>key investor information document</i>	a short <i>document</i> containing <i>key investor information</i> for investors on the essential elements of a <i>UCITS scheme</i> , as detailed in <i>COLL</i> 4.7.2R (Key investor information).
<i>KII Regulation</i>	Commission Regulation (EU) No 583/2010, specifying the form and contents of <i>key investor information</i> , the text of which is reproduced in <i>COLL</i> Appendix 1EU.
<i>master-feeder agreement</i>	(in <i>COLL</i>) a written agreement between the <i>management company</i> of a <i>master UCITS</i> and the <i>management company</i> of a <i>feeder UCITS</i> in accordance with <i>COLL</i> 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules).
<i>master UCITS</i>	(in accordance with article 58(3) of the <i>UCITS Directive</i>) a <i>UCITS scheme</i> , an <i>EEA UCITS scheme</i> or a <i>sub-fund</i> of such a <i>scheme</i> where: <ul style="list-style-type: none"> (a) at least one of its <i>unitholders</i> is a <i>feeder UCITS</i>; (b) it is not itself a <i>feeder UCITS</i>; and (c) it does not hold <i>units</i> of a <i>feeder UCITS</i>.
<i>merging UCITS</i>	(in <i>COLL</i>) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> , <i>EEA UCITS scheme</i> or <i>sub-fund</i> of such a <i>scheme</i> , that under the

	proposed arrangements will be transferring all its assets and liabilities to the <i>receiving UCITS</i> .
<i>Qualifying management company holding</i>	(in <i>COLL</i>) a direct or indirect holding in a <i>management company</i> which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists; and for this purpose the voting rights referred to in articles 9 and 10 of the <i>Transparency Directive</i> must be taken into account.
<i>rebalancing of the portfolio</i>	(in <i>COLL</i> and in accordance with article 2(1) of the <i>UCITS implementing Directive No 2</i>) means a significant modification of the composition of the <i>scheme property</i> of a <i>UCITS scheme</i> or the portfolio of an <i>EEA UCITS scheme</i> .
<i>receiving UCITS</i>	(in <i>COLL</i>) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or <i>sub-fund</i> of that <i>scheme</i> , whether it is an existing <i>scheme</i> (or a <i>sub-fund</i> of it) or one that is being formed for the purpose of that merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more <i>merging UCITS</i> .
<i>risk limit system</i>	(in <i>COLL</i> and in accordance with article 40(2)(d) of the <i>UCITS implementing Directive</i>) a documented system of internal limits concerning the measures used by a <i>management company</i> to manage and control the relevant risks for each <i>UCITS</i> it manages, taking into account all the risks which may be material to the <i>UCITS</i> , as referred to in the second paragraph of article 38(1) of the <i>UCITS implementing Directive</i> and ensuring consistency with the <i>UCITS'</i> risk profile.
<i>synthetic risk and reward indicator</i>	(in <i>COLL</i> and in accordance with article 2(2) of the <i>UCITS implementing Directive No 2</i>) a synthetic indicator within the meaning of article 8 of the <i>KII Regulation</i> .
<i>UCITS</i>	undertakings for collective investment in transferable securities that are established in accordance with the <i>UCITS Directive</i> .
<i>UCITS Home State</i>	the <i>Home State</i> of a <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> .
<i>UCITS implementing Directive</i>	Commission Directive (2010/43/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a <i>depository</i> and a <i>management company</i> .
<i>UCITS implementing Directive No 2</i>	Commission Directive (2010/44/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.

<i>UCITS marketing notification</i>	(in <i>COLL</i>) a notification in respect of a <i>UCITS scheme</i> , for the purpose of <i>marketing units</i> in another <i>EEA State</i> , pursuant to: <ul style="list-style-type: none"> (a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the <i>Act</i>; or (b) article 46 of the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC).
<i>UCITS merger</i>	(in <i>COLL</i> and in accordance with article 2(1)(p) of the <i>UCITS Directive</i>) a merger between one or more <i>UCITS schemes</i> or between one or more <i>UCITS schemes</i> and <i>EEA UCITS schemes</i> being an operation whereby: <ul style="list-style-type: none"> (a) one or more <i>merging UCITS</i>, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing <i>receiving UCITS</i>, in exchange for the issue to its <i>unitholders</i> of <i>units</i> of the <i>receiving UCITS</i> and, if applicable, a cash payment not exceeding 10% of the net asset value of those <i>units</i> (a “merger by absorption”); or (b) two or more <i>merging UCITS</i>, on being dissolved without going into liquidation, transfer all of its assets and liabilities to a <i>receiving UCITS</i> which they form, in exchange for the issue to their <i>unitholders</i> of <i>units</i> of the <i>receiving UCITS</i> and, if applicable, a cash payment not exceeding 10% of the net asset value of those <i>units</i> (a “merger by formation of a new <i>UCITS</i>”); or (c) one or more <i>merging UCITS</i>, which continue to exist until the liabilities have been discharged, transfer its net assets to another <i>receiving UCITS</i>, and for this purpose the <i>merging UCITS</i> and the <i>receiving UCITS</i> may be <i>sub-funds</i> of the same <i>UCITS</i> (a “merger by <i>scheme of arrangement</i>”); <p>but at least one of which is established in the <i>United Kingdom</i>.</p>
<i>UCITS Regulations 2011</i>	the Undertaking for Collective Investment in Transferable Securities Regulations 2011 (SI 2011/1613).
<i>UK UCITS management company</i>	a <i>management company</i> that is established in the <i>United Kingdom</i> and is <i>authorised</i> and regulated by the <i>FSA</i> .
Amend the following as shown.	
<i>asset management company</i>	a management company within the meaning of Article 1a(2) <u>2(1)(b)</u> of the <i>UCITS Directive</i> , as well as an <i>undertaking</i> the registered

office of which is outside the *EEA* and which would require authorisation in accordance with Article ~~5(4)~~ 6(1) of the *UCITS Directive* if it had its registered office within the *EEA*.

class

...

(2) (in *COLL*):

(a) a particular class of *units* of an *authorised fund*; or

(b) all of the *units* relating to a single *sub-fund*; or

(c) a particular class of *units* relating to a single *sub-fund*; or

(d) in relation to an *EEA UCITS scheme*, any arrangement equivalent to (a), (b) or (c).

...

client

(1) ...

...

(b) “client” includes:

...

(iiiA) any person to whom *collective portfolio management services* are provided, irrespective of whether or not it is *authorised*;

...

complaint

...

(3) (in *DISP* 1.1, the complaints awareness rules only in relation to *collective portfolio management* and the *complaints handling rules* and the *complaints record rule* only in relation to *MiFID business and collective portfolio management*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

...

control

(1) (except in (2) and (2A)) ...

...

- (2A) (in relation to a management company carrying on collective portfolio management) control as defined in articles 1 and 2 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive).
- (3) (except in (2) and (2A)) ...
- (4) (except in (2) and (2A)) ...
- (5) (except in (2) and (2A)) ...
- ...
- covered bond* (1) (in accordance with Article ~~22(4)~~ 52(4) of the *UCITS Directive* and except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued by a *credit institution* which has its registered office in an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
- ...
- depository* (1) (except in *LR*):
- ...
- (ca) (in relation to an EEA UCITS scheme) the person fulfilling the function of a depository in accordance with article 2(1)(a) of the UCITS Directive;
- ...
- durable medium* (a) ...
- (b) ...
- (in relation to MiFID or equivalent third country business or collective portfolio management, if the relevant rule implements the MiFID implementing Directive, the UCITS Directive, the UCITS implementing Directive or the UCITS implementing Directive No 2) the instrument must be:
- ...

[**Note:** article 2(f) and Recital 20 of the *Distance Marketing*

Directive, article 2(12) of the *Insurance Mediation Directive*, and articles 2(2), 3(1) and 3(3) of the *MiFID implementing Directive*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

<i>EEA firm</i>	(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> : ... (f) (from 13 February 2004 <u>1 July 2011</u>) a management company <u>management company</u> (as defined in article 1(a) of the <i>UCITS Directive</i> which has been authorised under article 5 of that directive by its <i>Home State regulator</i> ; ...
<i>EEA simplified prospectus</i>	a marketing document which contains information about an EEA simplified prospectus scheme and meets the requirements of Article 28 of the <i>UCITS Directive</i> <u>the UCITS Directive (No 85/611/EEC)</u> (as at 30 June 2011).
<i>EEA simplified prospectus scheme</i>	a UCITS scheme <u>an EEA UCITS scheme</u> which is a <i>recognised scheme</i> under section 264 of the <i>Act</i> (Schemes constituted in other EEA States) <u>and which is permitted by the laws and regulations of its Home State to market its units on the basis of an EEA simplified prospectus.</u>
<i>EEA UCITS management company</i>	(as defined in article 1a (2) of the UCITS Directive) any <i>incoming EEA firm</i> , the regular business of which is the management of UCITS in the form of unit trusts or common funds or of investment companies (collective portfolio management of UCITS) or of both; this includes the functions mentioned in Annex II. <u>any incoming EEA firm that is a management company.</u>
<i>execution criteria</i>	the criteria set out in <i>COBS</i> 11.2.6R, that is: ... (d) the characteristics of the <i>execution venues</i> to which that order can be directed; <u>and</u> (e) <u>for a management company, the objectives, investment policy and risks specific to the UCITS scheme or EEA UCITS scheme, as indicated in its prospectus or instrument constituting the scheme.</u>

<i>execution venue</i>	for the purposes of the provisions relating to best execution in <i>COBS</i> 11.2 <u>and in <i>COLL</i></u> , execution venue means ...
<i>Home State</i>	... <p>(10) <u>(in relation to a <i>UCITS</i>): the <i>EEA State</i> in which the unit trust, common fund or investment company is established and authorised under article 5 of the <i>UCITS Directive</i>.</u></p> <p>(a) with regard to a <i>UCITS</i> constituted as a unit trust/common fund, the <i>EEA State</i> in which the management company's registered office is situated;</p> <p>(b) with regard to a <i>UCITS</i> constituted as an investment company, the <i>EEA State</i> in which the investment company's registered office is situated.</p> <p>...</p>
<i>Home State regulator</i>	... <p>(2) (in relation to a <i>UK firm</i> or <i>UCITS scheme</i>) the <i>FSA</i>.</p> <p>...</p> <p>(5) <u>(in relation to an <i>EEA UCITS scheme</i>) the competent authority of the <i>EEA State</i> in which the <i>scheme</i> is authorised.</u></p>
<i>Host State</i>	... <p>(4) <u>(in relation to the <i>UCITS Directive</i>) the <i>EEA State</i>, other than the <i>UCITS Home State</i>, in which <i>units</i> of a <i>UCITS</i> are marketed in accordance with a notification made under article 93 of that directive.</u></p> <p>...</p>
<i>Host State regulator</i>	... <p>(4) <u>(in relation to an <i>EEA UCITS scheme</i> which is a <i>recognised scheme</i>) the <i>FSA</i>.</u></p> <p>(5) <u>(in relation to a <i>UCITS</i> that is the subject of a notification in accordance with article 93 of the <i>UCITS Directive</i>) the competent authority of an <i>EEA State</i> (other than the <i>United Kingdom</i>) in which <i>units</i> of the <i>UCITS</i> may be marketed to the public.</u></p>
<i>instrument</i>	...

<i>constituting the scheme</i>	<p>(ba) <u>(in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme;</u></p> <p>(c) (in relation to a <i>collective investment scheme</i> other than an <i>authorised fund</i> or an <i>EEA UCITS scheme</i>) any instrument to which ...</p>
<i>key features scheme</i>	<p>a <i>scheme</i> that is not:</p> <p>(a) a simplified prospectus <u>UCITS scheme or an EEA UCITS scheme;</u></p> <p>...</p>
<i>liquidity risk</i>	<p>(1) <u>(in COLL and in accordance with article 3(8) of the UCITS implementing Directive) the risk that a position in a UCITS' portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short timeframe and that the ability of the scheme to comply at any time with COLL 6.2.16R (Sale and redemption) or, in the case of an EEA UCITS scheme, article 84(1) of the UCITS Directive is thereby compromised.</u></p> <p>(2) (except in COLL) the risk that a <i>firm</i>, although solvent, either does not have available sufficient financial resources to enable it to meet its obligations as they fall due, or can secure such resources only at excessive cost.</p>
<i>management company</i>	<p>means a company as defined in article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).</p> <p><u>(in accordance with article 2(1)(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6(3) of that directive.</u></p>
<i>manager</i>	<p>(1) (in relation to an AUT) the <u>firm, including, if relevant, an EEA UCITS management company,</u> which is the manager of the AUT in accordance with the <i>trust deed</i>.</p> <p>...</p>
<i>market risk</i>	<p>(1) <u>(in COLL and in accordance with article 3(9) of the UCITS implementing Directive) the risk of loss for a UCITS resulting from fluctuation in the market value of positions in the scheme's portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates,</u></p>

- equity and commodity prices or an issuer's credit worthiness.
- (2) (except in COLL) (in relation to a *firm*) the risks that arise from fluctuations in values of, or income from, assets or in interest or exchange rates.
- MiFID investment firm* ...
- ...
- (3) a *UCITS investment firm* (only when providing the services referred to in Article ~~5(3)~~ 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in Article ~~5(4)~~ 6(4) of that Directive);
- ...
- non-directive firm* ...
- ...
- (c) a *management company* as defined in article ~~1a.2~~ 2(1)(b) of the *UCITS Directive*, authorised under that directive;
- ...
- operational risk* (1) (in COLL and in accordance with article 3(10) of the UCITS implementing Directive) the risk of loss for a *UCITS* resulting from inadequate internal processes and failures in relation to the people and systems of the management company or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the scheme.
- (2) (except in COLL) (in accordance with Article 4(22) of the *Banking Consolidation Directive*) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.
- participant firm* (1) (except in *FEES* 1 and *FEES* 6) a *firm* or *member* other than:
- (a) (in accordance with section 213(10) of the *Act* (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is:
- (i) a *credit institution*;
- (ii) a *MiFID investment firm*; or

- (iii) a *UCITS management company*; [deleted]
- (iv) both (i) and (ii); or
- (v) an *IMD insurance intermediary* or an *IMD reinsurance intermediary* which is neither (i) or (ii);

in relation to its *passport activities*, unless it has *top-up cover* ~~(and in the case of a *UCITS management company*, only in relation to the services referred to in Article 5(3) of the *UCITS Directive*, that is *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*;~~

(aa) (in accordance with section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is a *management company* other than to the extent that it carries on the following activities from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*:

- (i) *collective portfolio management for a UCITS scheme*; or
- (ii) *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments* (the services referred to in article 6(3) of the *UCITS Directive*), but only if it has *top-up cover*;

...

relevant person

...

(2) any of the following:

...

(d) a natural person who is directly involved in the provision of services to the *firm* or its *appointed representative* (or where applicable, *tiered agent*) under an *outsourcing* arrangement or (in the case of a *management company*) a delegation arrangement to *third parties*, for the purpose of the provision by the *firm of regulated activities* or (in the case of a *management company*) *collective portfolio*

management.

[**Note:** article 2(3) of the *MiFID implementing Directive* and article 3(3) of the *UCITS implementing Directive*]

scheme of arrangement

...

(b) ...

- (ii) *units* in the transferee *sub-fund* or one or more of the transferee *sub-funds*, to which the property is reattributed.

This arrangement includes an arrangement that constitutes a domestic UCITS merger or a cross-border UCITS merger.

senior personnel

- (1) those *persons* who effectively direct the business of the *firm*, which could include a *firm's governing body* and other *persons* who effectively direct the business of the *firm*.

- (2) (in relation to a *management company* and in accordance with article 3(4) of the *UCITS implementing Directive*) the *person* or *persons* who effectively conduct the business of the *management company*.

simplified prospectus scheme

- ~~(a) a *UCITS scheme* that is not a recognised scheme under section 264 of the *Act* (Schemes constituted in other EEA States); or~~

- ~~(b) a *key features scheme* in respect of which a *simplified prospectus* has been, or will be, produced instead of a *key features document* (see COBS 13.1.3R(2)).~~

sub-fund

(a) ...

- (aa) (in relation to an *EEA UCITS scheme*) any part of that *scheme* that constitutes an investment compartment for the purposes of the *UCITS Directive*;

- (b) (in relation to a *collective investment scheme* that is not an *authorised fund* or an *EEA UCITS scheme*) any part of that *scheme*...

supervisory function

- (1) any function within a *common platform firm* that is responsible for the supervision of its *senior personnel*.

- (2) (in relation to a *management company* and in accordance with article 3(6) of the *UCITS implementing Directive*) the *relevant persons* or body or bodies responsible for the supervision of its *senior personnel* and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of

the policies, arrangements and procedures put in place to comply with its obligations under the UCITS Directive.

UCITS Directive

the European Parliament and Council Directive of 20 December 1985 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC 2009/65/EC), as amended.

UCITS firm

a firm which:

- (a) is ~~the operator of a UCITS scheme~~ a management company, including where in addition the firm is also the operator of a collective investment scheme which is not a UCITS scheme; and
- (b) does not have a Part IV permission (or an equivalent permission from its Home State regulator) to carry on any regulated activities other than those which are in connection with, or for the purpose of, such schemes.

UCITS investment firm

a firm which:

- (1) is ~~the operator of a UCITS scheme~~ a management company
 - (a) (whether or not it is also the operator of other ~~schemes~~ collective investment schemes); and
 - (2) has a Part IV permission (or an equivalent permission from its Home State regulator) to manage ~~investments~~ investments where:
 - (a) the ~~investments managed~~ managed include one or more of the instruments listed in Section C of Annex 1 to MiFID; and
 - (b) the permission extends to activities permitted by ~~article 5(3)~~ article 6(3) of the UCITS Directive as well as those permitted by ~~article 5(2)~~ article 6(2).

UCITS management company

...

- (2) (in relation to MiFID business) a ~~management company~~ management company as defined in the UCITS Directive. ...

UCITS scheme

- (a) an authorised fund ~~whose instrument constituting the scheme contains a statement that it is a UCITS scheme~~ authorised by the FSA in accordance with the UCITS Directive:

- (i) with the sole object of collective investment in transferable securities or in other liquid financial instruments permitted by COLL 5.2 (General

investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

(ii) with units which are, at the request of unitholders, repurchased or redeemed, directly or indirectly, out of the scheme's assets; and for this purpose action taken by or on behalf of a scheme to ensure that the stock exchange value of its units does not significantly vary from their net asset value is to be regarded as equivalent to that repurchase or redemption; or

(b) ~~an umbrella, that is a UCITS scheme~~ each of whose *sub-funds* would be a UCITS scheme if it had a separate *authorisation order*;

unless;

(c) ~~the scheme raises capital without promoting the sale of its units to the public within the EEA or any part of it; or [deleted]~~

(d) ~~the scheme's units under its trust deed or its instrument constituting the scheme, may be sold only to the public in non-EEA States; or~~

(e) the scheme (other than a master UCITS which has at least two feeder UCITS as unitholders) raises capital without promoting the sale of its units to the public within the EEA or any part of it.

[Note: article 1 of the UCITS Directive]

unitholder

~~(in CIS) (in relation to an AUT, and subject to CIS 11.3.2R (Special meaning of unitholder)):~~

(a) ~~(in relation to a unit which is represented by a bearer certificate) the person who holds the bearer certificate;~~

(b) ~~(in relation to a unit that is not represented by a bearer certificate) the person whose name is entered on the register in relation to that unit.~~

~~(in COLL)~~

(a) ...

website conditions

...

[Note: article 3 of the MiFID implementing Directive and article

38(2) of the *KII Regulation*

Annex B

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

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

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
<u>2.7A</u>	<u>G</u>	<u>EEA UCITS management companies</u> are also reminded that they must comply with:
		(1) <u>the common platform requirements indicated in Column A+ (Application to a management company) in Part 3 of this Annex;</u>
		(2) <u>the common platform record-keeping requirements; and</u>
		(3) <u>the common platform requirements on financial crime;</u>
		<u>in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 12 of the UCITS Directive, an EEA UCITS management company should note that those matters may also be subject to the rules of its Home State regulator.</u>
		<u>[Note: articles 12(1)(b), 14(1)(c), 14(1)(d), 17(4), 18(3) and 19(1) of the UCITS Directive and articles 4(1)(e), 10(1), 10(2) and 10(3) of the UCITS implementing Directive]</u>
	What?	
2.8	R	...
		(3) <u>ancillary activities; and</u>
		(4) <u>in relation to MiFID business, ancillary services; and</u>
		(5) <u>collective portfolio management.</u>
...		
	Where?	

...		
2.16	R	The <i>common platform requirements</i> , except the <i>common platform requirements on financial crime</i> and the <i>common platform record-keeping requirements</i> , apply to a firm that is not a <u>UK UCITS management company</u> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
2.16A	R	(1) <u>The <i>common platform requirements</i> referred to in Column A+ of Part 3 (below) apply to a <u>UK UCITS management company</u> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i>.</u>
		(2) <u>Any other <i>common platform requirement</i> applies to a <u>UK UCITS management company</u> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> to the extent that the requirement addresses matters within the scope of article 12 of the <i>UCITS Directive</i>.</u>
2.16B	G	The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the <u>UK UCITS management company's Host State regulator</u> .

Part 3		Table summarising the application of the common platform requirements to different types of firm
3.1	G	The <i>common platform requirements</i> apply in the following two <u>three</u> ways (subject to the provisions in Part 2 of this Annex).
...		
3.2A	G	<u>For a <i>management company</i>, they apply in accordance with Column A+ in the table below.</u>
...		

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 4	Application to a common platform firm <u>other than to a UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society

SYSC 4.1.1R	Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i>	<u>Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i></u>	Rule but SYSC 4.1.1R(2) applies only to a <i>third country BIPRU firm</i>
SYSC 4.1.2R	Rule	<u>Rule for a <i>UCITS investment firm</i>; otherwise guidance</u>	Guidance
SYSC 4.1.2AG	Not applicable	<u>Guidance for a <i>UCITS firm</i>; not applicable to a <i>UCITS investment firm</i></u>	Guidance
<u>SYSC 4.1.2BR</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 4.1.2CR</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
SYSC 4.1.3R	Rule applies only to a <i>BIPRU firm</i>	<u>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</u>	Not applicable
SYSC 4.1.4R	Rule	<u>Rule</u>	(1) and (3) Guidance (2) Rule
SYSC 4.1.4AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i>	<u>Rule</u>	Not applicable
SYSC 4.1.6R	Rule	<u>Rule for a <i>UCITS investment firm</i>; otherwise guidance</u>	Guidance
SYSC 4.1.7R	Rule	<u>Rule</u>	Guidance
SYSC 4.1.7AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.8G	Guidance	<u>Guidance</u>	Guidance
SYSC 4.1.9R	Rule	<u>Rule</u>	Not applicable

SYSC 4.1.10R	Rule	<u>Rule</u>	Guidance - except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.11G	Guidance	<u>Guidance</u>	Guidance
<u>SYSC 4.1.13G</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC 4.1.14G</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
SYSC 4.2.1R	Rule	<u>Rule</u>	- UK branch of <i>non-EEA bank</i> - rule applies. - Other <i>firms</i> – Guidance
SYSC 4.2.1AG	Not applicable	<u>Not applicable</u>	- Guidance
SYSC 4.2.2R	Rule	<u>Rule</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies - Other <i>firms</i> - this provision does not apply
SYSC 4.2.3G - 4.2.5G	Guidance	<u>Guidance</u>	- UK branch of a <i>non-EEA bank</i> - Guidance - Other <i>firms</i> - these provisions do not apply
SYSC 4.2.6R	Rule	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies - Other <i>firms</i> - this provision does not apply
SYSC 4.3.1R	Rule	<u>Rule</u>	Rule (but not applicable to <i>incoming</i>

			<i>EEA firms, incoming Treaty firms or UCITS qualifiers)</i>
SYSC 4.3.2R	Rule	<u>Rule</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i>)
SYSC 4.3.2AG	Not applicable	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i>)
SYSC 4.3.3G	Guidance	<u>Guidance</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i>)
SYSC 4.4.1R	Not applicable	<u>Not applicable</u>	Rule applies this section only to: (1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i> ; (2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is: (a) an <i>oil market participant</i> ; (b) a <i>service company</i> ;

			<p>(c) an <i>energy market participant</i>; (d) a wholly-owned subsidiary of:</p> <p>(i) a local authority; (ii) a registered social landlord;</p> <p>(e) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i>;</p> <p>(3) an <i>incoming Treaty firm</i>, an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i>, (but only SYSC 4.4.5R(2) applies for these <i>firms</i>); and (4) a <i>sole trader</i>, but only if he employs any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements).</p>
SYSC 4.4.2G	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.3R	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.4G	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.5R	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R

<u>SYSC 4.4.6G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance only applying to the firms specified in SYSC 4.4.1R</u>
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Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 5	Application to a common platform firm other than to a <u>UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 5.1.1R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 5.1.2G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.3G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.4G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.4AG</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.5G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.5AG</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.6R</i>	Rule	<u>Rule</u>	Guidance
<i>SYSC 5.1.7R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 5.1.7AG</i>	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC</i>	Guidance	<u>Guidance</u>	Guidance

5.1.8G			
SYSC 5.1.9G	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.10G	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.11G	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.12R	Rule	<u>Rule</u>	Guidance
SYSC 5.1.12AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 5.1.13R	Rule	<u>Rule</u>	Rule
SYSC 5.1.14R	Rule	<u>Rule</u>	Guidance
SYSC 5.1.15G	Not applicable	<u>Not applicable</u>	Guidance

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 6	Application to a common platform firm <u>other than to a UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
SYSC 6.1.1R	Rule	<u>Rule</u>	Rule
SYSC 6.1.2R	Rule	<u>Rule</u>	Guidance
SYSC 6.1.2AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.3R	Rule	<u>Rule</u>	- Guidance - This provision shall be read with the

			following additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account 6.1.3R and 6.1.4R as guidance."
SYSC 6.1.3AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.4R	Rule	<u>Rule</u>	(1) (3) and (4) Guidance (2) - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for retail clients <u>retail clients</u> or professional clients <u>professional clients</u> . - Guidance for all other <i>firms</i> .
<u>SYSC 6.1.4-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance</u>
<u>SYSC 6.1.4AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i>.</u>
SYSC 6.1.5R	Rule	<u>Rule</u>	- Guidance - " <i>investment services and activities</i> " shall be read as "financial

			services and activities"
<i>SYSC</i> 6.1.6RG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 6.2.1R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 6.2.1AG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 6.2.2G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.1R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.2G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.3R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.4G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.5G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.6G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.7G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.8R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.9R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.10G	Guidance	<u>Guidance</u>	Guidance

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 7	Application to a common platform firm	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers,

	<u>other than to a UCITS investment firm</u>		managing agents and the Society
SYSC 7.1.1G	Guidance	<u>Guidance</u>	Guidance
SYSC 7.1.2R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.2AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<u>SYSC 7.1.2BG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
SYSC 7.1.3R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.4R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.4AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<u>SYSC 7.1.4BG</u>	<u>Not applicable</u>	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	<u>Guidance</u>
SYSC 7.1.5R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.6R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.7R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.7AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance

<u>SYSC 7.1.7BG</u>	<u>Guidance applies only to a BIPRU firm</u>	<u>Guidance for a UCITS investment firm; otherwise not applicable</u>	<u>Guidance</u>
<u>SYSC 7.1.7CG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
SYSC 7.1.8G(1), (2)	(1) <u>Guidance applies only to a BIPRU firm</u> (2) <u>Guidance</u>	(1) <u>Guidance for a UCITS investment firm; otherwise not applicable</u> (2) <u>Guidance</u>	(1) Not applicable (2) <u>Guidance</u>
SYSC 7.1.9R	<u>Rule applies only to a BIPRU firm</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	Not applicable
SYSC 7.1.10R	<u>Rule applies only to a BIPRU firm</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	Not applicable
SYSC 7.1.11R	<u>Rule applies only to a BIPRU firm</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	Not applicable
SYSC 7.1.12G	<u>Guidance applies only to a BIPRU firm</u>	<u>Guidance for a UCITS investment firm; otherwise not applicable</u>	Not applicable
SYSC 7.1.13R - 7.1.16R	<u>Rule applies only to a BIPRU firm</u>	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	Not applicable

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
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SYSC 8	Application to a common platform firm other than to a <u>UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
SYSC 8.1.1R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.1AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.2G	Guidance	<u>Guidance</u>	Guidance
SYSC 8.1.3G	Guidance	<u>Guidance</u>	Guidance
SYSC 8.1.4R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.5R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.5AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.6R	Rule	<u>Rule</u>	Rule
SYSC 8.1.7R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.8R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.9R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC	Rule	<u>Rule for a UCITS investment firm;</u>	Guidance

8.1.10R		<u>otherwise guidance</u>	
SYSC 8.1.11R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.11AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.12G	Guidance	<u>Guidance</u>	Guidance
<u>SYSC 8.1.13R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 8.1.14G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
SYSC 8.2	<i>MiFID investment firms only</i>	<u>UCITS investment firms only</u>	Not applicable
SYSC 8.3	<i>MiFID investment firms only</i>	<u>UCITS investment firms only</u>	Not applicable

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 9	Application to a common platform firm other than to a <u>UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
SYSC 9.1.1R	Rule	<u>Rule</u>	Rule
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	<u>Rule applies only in relation to <i>MiFID business</i> of a UCITS investment firm</u>	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID</i>	<u>Rule applies only in relation to <i>MiFID business</i> of a UCITS</u>	Not applicable

	<i>business</i>	<u><i>investment firm</i></u>	
SYSC 9.1.4G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.5G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.6G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i>	<u>Guidance applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i></u>	Not applicable

Provision	Column A	<u>COLUMN A+</u>	Column B
SYSC 10	Application to a common platform firm <u>other than to a UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
SYSC 10.1.1R	Rule	<u>Rule</u>	Rule
SYSC 10.1.2G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.3R	Rule	<u>Rule</u>	Rule
SYSC 10.1.4R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3

SYSC 10.1.4AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.5G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.6R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYSC 10.1.6AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.7R	Rule	<u>Rule</u>	Rule
SYSC 10.1.8R	Rule	<u>Rule</u>	Rule
SYSC 10.1.8AR	Rule	<u>Rule</u>	Rule
SYSC 10.1.9G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.10R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYSC 10.1.11R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or

			arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYSC 10.1.11A G	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.12G - SYSC 10.1.15G	Guidance	<u>Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G – SYSC 10.1.15G</u>	Guidance
SYSC 10.1.16R	Not applicable	<u>Not applicable</u>	Rule
<u>SYSC 10.1.17R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.18G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
<u>SYSC 10.1.19R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.20R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.21R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
SYSC 10.2.1R	Rule	<u>Rule</u>	Rule
SYSC 10.2.2R	Rule	<u>Rule</u>	Rule
SYSC 10.2.3G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.2.4R	Rule	<u>Rule</u>	Rule
SYSC	Guidance	<u>Guidance</u>	Guidance

10.2.5G			
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...

4.1 General requirements

4.1.1 R ...

[**Note:** article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

...

4.1.2B R For a management company, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must also take account of the UCITS schemes and EEA UCITS schemes managed by the management company.

[**Note:** article 12(1) second paragraph of the *UCITS Directive*]

Resources for management companies

4.1.2C R A management company must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[**Note:** articles 12(1)(a) and 14(1)(c) of the *UCITS Directive*]

Mechanisms and procedures for a BIPRU firm

4.1.3 R ...

4.1.4 R A firm (with the exception of a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the ~~(for a common platform firm) investment services and activities or (for every other firm)~~ financial services and activities undertaken in the course of that business:

- (1) (if it is a common platform firm or a management company) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the firm; ~~and~~

- (3) (if it is a *common platform firm*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and
- (4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[**Note:** articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the *MiFID implementing Directive* and articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*]

4.1.4A G A *firm* that is not a *common platform firm* or a management company should take into account the decision-making procedures and effective internal reporting rules (*SYSC* 4.1.4R(1), ~~and~~ (3) and (4)) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in *SYSC* Annex 1.3.3G.

4.1.5 R A *MiFID investment firm* and a management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[**Note:** article 5(2) of the *MiFID implementing Directive* and article 4(2) of the UCITS implementing Directive]

...

4.1.7 R A *common platform firm* and a management company must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a management company, its collective portfolio management activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of ~~its regulated activities~~ those activities.

[**Note:** article 5(3) of the *MiFID implementing Directive*, ~~and~~ annex V paragraph 13 of the *Banking Consolidation Directive* and article 4(3) of the UCITS implementing Directive]

...

Accounting policies

4.1.9 R A *common platform firm* and a management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the *FSA*, to deliver in a timely manner to the *FSA* financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[**Note:** article 5(4) of the *MiFID implementing Directive* and article 4(4) of the *UCITS implementing Directive*]

Regular monitoring

- 4.1.10 R A *common platform firm* and a *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4R to SYSC 4.1.9R and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive* and article 4(5) of the *UCITS implementing Directive*]

...

4.2 Persons who effectively direct the business

- 4.2.1 R The *senior personnel* of a *common platform firm*, a *management company* or of the *UK branch* of a *non-EEA bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[**Note:** article 9(1) of *MiFID*, article 7(1)(b) of the *UCITS Directive* and article 11(1) second paragraph of the *Banking Consolidation Directive*]

...

- 4.2.2 R A *common platform firm*, a *management company* and the *UK branch* of a *non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R.

[**Note:** article 9(4) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive* and article 11(1) first paragraph of the *Banking Consolidation Directive*]

...

- 4.2.4 G At least two independent minds should be applied to both the formulation and implementation of the policies of a *common platform firm*, a *management company* and the *UK branch* of a *non-EEA bank*. ...

- 4.2.5 G Where there are more than two individuals directing the business of a *common platform firm*, a *management company* or the *UK branch* of a *non-EEA bank*, the *FSA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. ...

...

4.3 Responsibility of senior personnel

- 4.3.1 R ...
- [**Note:** article 9(1) of the *MiFID implementing Directive* and articles 9(1) and 9(3) of the *UCITS implementing Directive*]
- 4.3.2 R A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) and a *management company*, must ensure that :
- ...
- [**Note:** article 9(2) and article 9(3) of the *MiFID implementing Directive* and articles 9(4) and 9(6) of the *UCITS implementing Directive*]
- ...
- 5.1 Skills, knowledge and expertise**
- 5.1.1 R A *firm* must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- [**Note:** article 5(1)(d) of the *MiFID implementing Directive*, articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]
- ...
- Segregation of functions
- 5.1.6 R A *common platform firm* and a *management company* must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.
- [**Note:** article 5(1)(g) of the *MiFID implementing Directive* and article 5(3) of the *UCITS implementing Directive*]
- ...
- Awareness of procedures
- 5.1.12 R A *common platform firm* and a *management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.
- [**Note:** article 5(1)(b) of the *MiFID implementing Directive* and article 4(1)(b) of the *UCITS implementing Directive*]
- General
- 5.1.13 R The systems, internal control mechanisms and arrangements established

by a *firm* in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of ~~(for a *common platform firm*) investment services and activities~~ or ~~(for every other *firm*)~~ financial services and activities undertaken in the course of that business.

[**Note:** article 5(1) final paragraph of the *MiFID implementing Directive* and articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]

- 5.1.14 R A *common platform firm* and a management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive* and articles 4(5) of the *UCITS implementing Directive*]

...

6.1 Compliance

- 6.1.1 R A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where appropriate, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 13(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

- 6.1.2 R A *common platform firm* and a management company must, taking into account the nature, scale and complexity of its business, and the nature and range of ~~investment services and activities~~ financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FSA* to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under *MiFID* or the *UCITS Directive*.

[**Note:** article 6(1) of the *MiFID implementing Directive* and article 10(1) of the *UCITS implementing Directive*]

...

- 6.1.3 R A *common platform firm* and a management company must maintain a permanent and effective compliance function which operates

independently and which has the following responsibilities:

- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
- (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[**Note:** article 6(2) of the *MiFID implementing Directive* and article 10(2) of the *UCITS implementing Directive*]

...

6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* and a *management company* must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
- (3) the *relevant persons* involved in the compliance function must not be involved in the performance of services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[**Note:** article 6(3) first paragraph of the *MiFID implementing Directive* and article 10(3) of the *UCITS implementing Directive*]

...

6.1.4A R (1) A *firm* which is not a *common platform firm* or *management company* and which carries on ...

...

6.1.5 R A *common platform firm* and a *management company* need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of ~~(for a *common platform firm*) *investment services and activities*~~ or ~~(for every other *firm*)~~ financial services and activities, the requirements under those *rules* are not proportionate and that its

compliance function continues to be effective.

[**Note:** article 6(3) second paragraph of the *MiFID implementing Directive* and article 10(3) second paragraph of the *UCITS implementing Directive*]

...

6.2 Internal audit

- 6.2.1 R *A common platform firm and a management company* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of *investment services and activities* its *financial services and activities*, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

...

[**Note:** article 8 of the *MiFID implementing Directive* and article 11 of the *UCITS implementing Directive*]

...

7.1 Risk control

...

- 7.1.2B G *A management company* should be aware that *COLL 6.11* contains requirements implementing article 12 of the *UCITS implementing Directive* in relation to risk control and internal reporting that will apply to it.

...

8.1 General outsourcing requirements

...

Additional requirements for a management company

- 8.1.13 R *A management company* must retain the necessary resources and expertise so as to monitor effectively the activities carried out by third parties on the basis of an arrangement with the *firm*, especially with regard to the management of the risk associated with those arrangements.

[**Note:** article 5(2) of the *UCITS implementing Directive*]

- 8.1.14 G *A management company* should be aware that *SUP 15.8.6R* (Delegation by UCITS management companies) and *COLL 6.6.15AR* (Committees and delegations) contain requirements implementing article 13 of the

UCITS Directive in relation to delegation that will apply to it.

...

9.1 General rules on record-keeping

...

- 9.1.1 R A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FSA* or any other relevant *competent authority* under *MiFID* or the *UCITS Directive* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** article 13(6) of *MiFID*, ~~and~~ article 5(1)(f) of the *MiFID implementing Directive*, article 12(1)(a) of the *UCITS Directive* and article 4(1)(e) of the *UCITS implementing Directive*]

...

10.1 Application

- 10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).
- (2) This section also applies to a *management company*.

...

Types of conflicts

- 10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a *client*, a *common platform firm* and a *management company* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

...

(2A) in the case of a *management company* providing *collective portfolio management services* for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;

...

- (4) carries on the same business as the *client* or in the case of a *management company*, carries on the same activities for the *UCITS scheme* and for another *client* or *clients* which are not *UCITS schemes*; or

...

The conflict of interest may result from the *firm* or *person* providing a service referred to in SYSC 10.1.1R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective portfolio management services* or otherwise.

[**Note:** Article 21 of *MiFID implementing Directive* and article 17(1) of the *UCITS implementing Directive*]

...

Record of conflicts

- 10.1.6 R A *common platform firm* and a *management company* must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of ~~the~~ *that firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** Article 23 of *MiFID implementing Directive* and article 20(1) of the *UCITS implementing Directive*]

...

Disclosure of conflicts

- 10.1.8 R ...
- (3) This rule does not apply to the extent that SYSC 10.1.21R applies.

...

Conflicts policy

- 10.1.10 R (1) A *common platform firm* and a *management company* must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the *common platform firm* or the *management company* is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[**Note:** Article 22(1) of *MiFID implementing Directive* and article 18(1) of the *UCITS implementing Directive*]

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the *common platform firm or management company*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
 - ...
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *common platform firm or the management company* and of the *group* to which ~~it~~ either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; and
 - (b) include each of the following as are necessary and appropriate for the *common platform firm or the management company* to ensure the requisite degree of independence:
 - ...
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *common platform firm and a management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[**Note:** Article 22(2) and (3) of *MiFID implementing Directive* and articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

...

Additional requirements for a management company

- 10.1.17 R A management company, when identifying the types of conflict of interests for the purposes of SYSC 10.1.4R, must take into account:
- (1) the interests of the firm, including those deriving from its belonging to a group or from the performance of services and activities, the

interests of the *clients* and the duty of the *firm* towards the *UCITS scheme* or *EEA UCITS scheme* it manages; and

- (2) where it manages two or more *UCITS schemes* or *EEA UCITS schemes*, the interests of all of them.

[Note: article 17(2) of the *UCITS implementing Directive*]

- 10.1.18 **G** For a *management company*, references to *client* in SYSC 10.1.4R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* or *EEA UCITS scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

- 10.1.19 **R** A *management company* must be structured and organised in such a way as to minimise the risk of a *UCITS scheme's*, *EEA UCITS scheme's* or *client's* interests being prejudiced by conflicts of interest between the *management company* and its *clients*, between two of its *clients*, between one of its *clients* and a *UCITS scheme* or an *EEA UCITS scheme*, or between two such *schemes*.

[Note: articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]

Avoidance of conflicts of interest for a management company

- 10.1.20 **R** A *management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the *UCITS schemes* and *EEA UCITS schemes* it manages are fairly treated.

[Note: articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]

Disclosure of conflicts of interest for a management company

- 10.1.21 **R** (1) Where the organisational or administrative arrangements made by a *management company* for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *UCITS scheme* or *EEA UCITS scheme* it manages or of its *unitholders* will be prevented, the *senior personnel* or other competent internal body of the *firm* must be promptly informed in order for them to take any necessary decision to ensure that in all cases the *firm* acts in the best interests of the *scheme* and of its *unitholders*.
- (2) A *management company* must report situations referred to in (1) to the *unitholders* of the *UCITS scheme* or *EEA UCITS scheme* it manages by any appropriate *durable medium* and give reasons for its decision.

[Note: articles 20(2) and 20(3) of the *UCITS implementing Directive*]

...

Schedule 1 Record keeping requirements

...

Sch 1.2 G | Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>SYSC 9.1.1R</u>	<u>Business and internal organisation</u>	<u>Details of the firm's orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

Annex C**Amendments to the General Provisions (GEN)**

In this Annex, underlining indicates new text.

- 4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *FSA*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.

Annex D**Amendments to the General Prudential sourcebook (GENPRU)**

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

2.1.8 G ...

- (3) In the case of a *UCITS investment firm* this section implements (in part) Article ~~5a~~ 7 of the *UCITS Directive*.

Annex E

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

1.1 Introduction

...

- 1.1.3 G This sourcebook only applies to *UCITS firms*. *UCITS investment firms* are *BIPRU limited licence firms* and the prudential requirements for those *firms* are set out in the Prudential sourcebook for banks, building societies and investment firms and the General prudential sourcebook. The difference between the two types of *UCITS management companies* is that a *UCITS investment firm* in addition to carrying on the activities permitted by Article ~~5.2~~ 6(2) of the *UCITS Directive* (scheme management), may also carry on the activities permitted by Article ~~5.3~~ 6(3) such as portfolio management.

...

1.2 Purpose

- 1.2.1 G (1) ...
- (2) This sourcebook also implements certain requirements of the *UCITS Directive* ~~as amended by the amending Council Directive 2001/107/EC~~ which among other matters imposes capital requirements on a *UCITS management company*.

...

Annex F

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Annex 1 Application

...

Part 3: Guidance

...

9 UCITS Directive: effect on territorial scope

- 9.1 G The *UCITS Directive* covers undertakings for collective investment in transferable securities (~~UCITS~~ UCITS) meeting the requirements of the Directive, and their ~~management companies~~ management companies and ~~depositories~~ depositories. The rules in this sourcebook within the Directive's scope (all of which will apply to a management company) are those in:
- (1) COBS 2.1 (Acting honestly, fairly and professionally);
 - (2) COBS 2.3 (Inducements);
 - (3) COBS 4.2.1R (The fair, clear and not misleading rule);
 - (4) COBS 4.3.1R (Financial promotions to be identifiable as such);
 - (5) COBS 4.13 (UCITS);
 - (6) COBS 11.2 (Best execution);
 - (7) COBS 11.3 (Client order handling);
 - (8) COBS 11.7 (Personal account dealing);
 - (9) COBS 14 (Providing product information to clients) relating to the ~~distribution~~ provision of a simplified prospectus key investor information by the ~~management company~~ management company (in addition to applying to a management company, COBS 14.2 also applies to an ICVC that is a UCITS scheme); and

~~Those rules are the responsibility of the Home State of the UCITS. The Directive explicitly permits other EEA States in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field~~

~~governed by the Directive. The Directive also applies certain rules derived from *MiFID* to management companies in relation to certain business activities. (See articles 1(6) and 44 of the *UCITS Directive*).~~

(10) COBS 16.2 (Occasional reporting).

- 9.1A G The majority of the *COBS rules* referred to in paragraph 9.1 are rules of conduct which each *EEA State* must draw up under article 14.1 of the *UCITS Directive* which *management companies* authorised in that State must observe at all times. The exceptions are *COBS 4* and *COBS 14* in so far as they relate to a *UCITS scheme*, which form part of the *FSA's fund application rules* and which are the responsibility of the *UCITS Home State* (for a *UCITS scheme*, the *FSA* – see *COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules)* and article 19 of the *UCITS Directive*).
- 9.1B G Where a *management company* is providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the *management company's Home State*, but when a *branch* is established it will be the responsibility of the *Host Member State (UCITS Home State)* (see articles 17(4) and 17(5) of the *UCITS Directive*).
- 9.1C G Under the *UCITS Directive* certain *Host State* marketing and *MiFID*-specific rules might also apply to a *management company* providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*. Consequently, an *EEA UCITS management company* should note that, under *COBS*, certain of the *FSA's rules* apply to it, including the *financial promotion rules*. *COBS 4.13 (UCITS)* is concerned with *marketing communications for UCITS schemes and EEA UCITS schemes*.
- 9.1D G *EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS 18.5 (Operators of collective investment schemes)*.
- 9.2 G Accordingly, the territorial scope of this sourcebook is modified so that:
- (1) ~~the *rules* relating to the distribution of a *simplified prospectus* apply to the *management company (operator)* of a *UCITS* whose *Home State* is the *United Kingdom* when marketing in other *EEA States*;~~
- (2) ~~those *rules* do not apply to a *management company* of a~~

~~UCITS whose *Home State* is another *EEA State* when marketing in the *United Kingdom*; other rules, such as the *financial promotion rules* and the *information gathering and suitability rules* (see *COBS 9 Suitability* (including *basic advice*)) apply without modification of this territorial scope, but subject to section 266 of the Act. [deleted]~~

- 9.3 G The Directive does not affect the territorial scope of *rules* as they apply to an intermediary (that is not a *management company*) selling *units* of a UCITS *UCITS*.

[**Note:** articles 12, 14, 17, 18, 19 and 94 of the *UCITS Directive*]

...

2.1 Acting honestly, fairly and professionally

The client's best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).

...

- (3) For a *management company*, this rule applies in relation to any *UCITS scheme* or *EEA UCITS scheme* the *firm* manages.

[**Note:** article 19(1) of *MiFID* and article 14(1)(a) and (b) of the *UCITS Directive*]

...

2.3 Inducements

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission ...

[**Note:** article 26 of the *MiFID implementing Directive* and articles 29(1) and 29(2) of the *UCITS implementing Directive*]

- 2.3.1A R *COBS 2.3.1R* applies to a *UK UCITS management company* and *EEA UCITS management company* when providing *collective portfolio management services*, as if:

- (1) references to a *client*, were references to any *UCITS* it manages; and
- (2) in (2)(b) and (c) and (3) of that rule, references to *MiFID* or equivalent *third country business* were also references to the *collective portfolio management* activities of investment management and administration for the *scheme*.

[Note: article 29(1) of the UCITS implementing Directive]

...

2.3.2 R A firm ...

[Note: article 26 of the MIFID implementing Directive and article 29(2) of the UCITS implementing Directive]

2.3.2A R COBS 2.3.2R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if references to a client were references to a unitholder of the scheme.

[Note: article 29(2) of the UCITS implementing Directive]

...

4 Communicating with clients, including financial promotions

...

4.1.4 G ...

(3) In this chapter “financial promotion” and “direct offer financial promotion” include communications that are marketing communications for the purposes of the UCITS Directive.

...

Where? Modifications to comply with EU law

4.1.9 G ...

(2) One effect of the EEA territorial scope rule is that the rules in this chapter will not generally apply to a ~~simplified prospectus~~ that relates to a ~~simplified prospectus scheme~~ from another EEA State an EEA key investor information document but will, for example, apply to a firm (including an EEA UCITS management company) when marketing in the United Kingdom the units of an EEA UCITS scheme that is a recognised scheme.

...

...

The fair, clear and not misleading rule

4.2.1 R (1) A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.

...

[**Note:** article 19(2) of *MiFID*, ~~and~~ recital 52 to the *MiFID implementing Directive* and article 77 of the *UCITS Directive*]

...

- 4.3.1 R (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[**Note:** article 19(2) of *MiFID* and article 77 of the *UCITS Directive*]

...

- (4) In the case of a marketing communication that relates to a *UCITS scheme* or an *EEA UCITS scheme*, (2) and (3) do not limit the application of this rule.

...

- 4.6.4B G ...

- (2) This guidance does not apply to a *prospectus*, *key investor information document* or *simplified prospectus* drawn up in accordance with *COLL*.

...

- 4.7.5 G ~~*COLL* 4.6.12R requires an *authorised fund manager* to ensure that its *financial promotions*, which contain an invitation to purchase the *units* in a *UCITS scheme*, indicate that a *simplified prospectus* and a full *prospectus* exist, and the places where they may be obtained by the public or how the public may have access to them. [deleted]~~

- 4.7.5A G *COBS* 4.13.2R (Marketing communications relating to *UCITS schemes* or *EEA UCITS schemes*) and *COBS* 4.13.3R (Marketing communications relating to feeder *UCITS*) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* or *EEA UCITS scheme*.

After *COBS* 4.12 insert the following new section. The text is not underlined.

4.13 UCITS

Application

- 4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.

- (2) This section does not apply to:
- (a) *image advertising*; or
 - (b) the *instrument constituting the scheme*, the *prospectus*, the *key investor information* (or alternatively the *simplified prospectus* or *EEA simplified prospectus*) or the periodic reports and accounts of either a *UCITS scheme* or an *EEA UCITS scheme*.

[**Note:** recital (58) of the *UCITS Directive*]

Marketing communications relating to UCITS schemes or EEA UCITS schemes

- 4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme* and that contains specific information about the *scheme*:
- (a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* or *EEA key investor information document* for the *scheme*;
 - (b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* or *EEA key investor information document* is available; and
 - (c) specifies where and in which language such information or *documents* may be obtained by investors or potential investors or how they may obtain access to them.
- (2) Where a *UCITS scheme* or an *EEA UCITS scheme* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by an *EEA State*, one or more of its local authorities, a third country or a public international body to which one or more *EEA States* belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular *EEA States*, local authorities, third countries or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.
- (3) Where a *UCITS scheme* or *EEA UCITS scheme* invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with *COLL 5.2.31R* (Schemes replicating an index) or equivalent national measures implementing article 53 of the *UCITS Directive*, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.

- (4) Where the net asset value of a *UCITS scheme* or *EEA UCITS scheme* has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

- 4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document* or *EEA key investor information document*) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

Amend the following as shown.

6.4 Disclosure of charges, remuneration and commission

...

Disclosure of commission (or equivalent) for packaged products

- 6.4.3 R ...

- (4) This *rule* does not apply if:

...

- (c) the *firm* provides the *client* with a *key features document*, ~~or a *simplified prospectus*, a *key investor information document* or *EEA key investor information document*~~, in accordance with *COBS 14*, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.

...

...

11.1 Application

...

Application of section on personal account dealing

...

- 11.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS 11.7*) to the extent necessary to be compatible with European law (see paragraph 1.1R of Part 3 of *COBS 1 Annex 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.

...

11.2 Best execution

Obligation to execute orders on terms most favourable to the client

- 11.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[**Note:** article 21(1) of *MiFID* and article 25(2) first sentence of the *UCITS implementing Directive*]

...

Execution of decisions by UCITS management companies to deal on behalf of the schemes they manage

- 11.2.1A R A management company must, in relation to each UCITS scheme or EEA UCITS scheme it manages, act in the best interests of the scheme when executing decisions to deal on its behalf in the context of the management of its portfolio, and COBS 11.2.1R applies in relation to all such decisions.

[**Note:** article 25(1) of the *UCITS implementing Directive*]

Application of best execution obligation

- 11.2.2 G ...

...

Management companies: execution and transmission of orders

- 11.2.5A G (1) A management company should, for each UCITS scheme or EEA UCITS scheme it manages, act in the best interests of the scheme when directly executing orders to deal on its behalf or when transmitting those orders to third parties.
- (2) When executing orders on behalf of any such scheme it manages, a management company is expected to take all reasonable steps to

obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

[Note: recital (19) to the *UCITS implementing Directive*]

Best execution criteria

11.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:

...

(4) the characteristics of the *execution venues* to which that order can be directed; and

(5) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the scheme*.

[Note: article 44(1) of the *MiFID implementing Directive* and article 25(2) second sentence of the *UCITS implementing Directive*]

...

Requirement for order execution arrangements including an order execution policy

11.2.14 R A *firm* must establish and implement effective arrangements for complying with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. In particular, the *firm* must establish and implement an order execution policy to allow it to obtain, for its *client* orders, the best possible result in accordance with that obligation.

[Note: article 21(2) of *MiFID* and article 25(3) first paragraph of the *UCITS implementing Directive*]

...

11.2.23A R A *management company* must make available appropriate information on its execution policy and on any material changes to that policy to the unitholders of each *scheme* it manages.

[Note: article 25(3) second part of the second paragraph of the *UCITS implementing Directive*]

11.2.24 R ...

...

Client consent to execution policy and execution of orders outside a regulated market or MTF

- 11.2.25 R (1) A firm (other than a management company providing collective portfolio management services for a UCITS scheme or an EEA UCITS scheme) must obtain the prior consent of its *clients* to the execution policy.
- (2) In the case of a management company providing collective portfolio management services for an ICVC that is a UCITS scheme, or for an EEA UCITS scheme that is structured as an investment company, the management company must obtain the prior consent of the ICVC or investment company to the execution policy.
- (3) In the case of a management company that is the ACD of an ICVC that is a UCITS scheme, (2) does not apply where the ACD is the sole director of the ICVC.

[**Note:** paragraph 2 of article 21(3) of *MiFID* and article 25(3) first part of the second paragraph of the UCITS implementing Directive]

...

Monitoring the effectiveness of execution arrangements and policy

- 11.2.27 R A *firm* must monitor the effectiveness of its order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, it must assess on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements. The *firm* must notify *clients* of any material changes to their order execution arrangements or execution policy.

[**Note:** article 21(4) of *MiFID* and article 25(4) first paragraph of the UCITS implementing Directive]

Review of the order execution policy

- 11.2.28 R (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.
- (2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[**Note:** article 46(1) of the *MiFID implementing Directive* and article 25(4) second paragraph of the UCITS implementing Directive]

Demonstration of execution of orders in accordance with execution policy

- 11.2.29 R (1) A *firm other than a management company* must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

- (2) A management company must be able to demonstrate that it has executed orders on behalf of any UCITS scheme or EEA UCITS scheme it manages in accordance with its execution policy.

[**Note:** article 21(5) of *MiFID* and article 25(5) of the *UCITS implementing Directive*]

Duty of portfolio managers, ~~and~~ receivers and transmitters and management companies to act in clients' best interests

- 11.2.30 R A *firm* must, when providing the service of *portfolio management* or, for a management company, collective portfolio management, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[**Note:** article 45(1) of *MiFID implementing Directive* and article 26(1) of the UCITS implementing Directive]

...

- 11.2.32 R In order to comply with the obligation to act in accordance with the best interests of its *clients* when it places an order with, or transmits an order to, another entity for execution, a *firm* must:

[**Note:** article 45(3) of the *MiFID implementing Directive* and article 26(1) of the UCITS implementing Directive]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for ~~retail clients~~ *retail clients*, to the requirement to determine the best possible result in terms of the total consideration (see *COBS 11.2.7R*).

A *firm* satisfies its obligation to act in accordance with the best interests of its *clients*, and is not required to take the steps mentioned above, to the extent that it follows specific instructions from its *client* when placing an order with, or transmitting an order to, another entity for execution;

[**Note:** paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive* and article 26(2) first paragraph of the UCITS implementing Directive]

- (2) establish and implement a policy to enable it to comply with the obligation to take all reasonable steps to obtain the best possible result for its *clients*. The policy must identify, in respect of each class of instruments, the entities with which the orders are placed or to which the *firm* transmits orders for execution. The entities identified must have execution arrangements that enable the *firm*

to comply with its obligations under this section or, for a *management company*, must only enter into arrangements for execution where those arrangements are consistent with the requirements of this section, when it places an order with, or transmits an order to, that entity for execution;

[**Note:** paragraph 1 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph of the *UCITS implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with *COBS* 11.2.32R(2) or, for a *management company*, make available to *unitholders* appropriate information on that policy and on any material changes to it;

[**Note:** paragraph 2 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph last sentence of the *UCITS implementing Directive*]

- (4) monitor on a regular basis the effectiveness of the policy and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies; and

[**Note:** first paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) first paragraph of the *UCITS implementing Directive*]

- (5) review the policy annually. This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for its *clients*.

[**Note:** second paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2.32A R *A management company* must be able to demonstrate that it has placed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with the policy referred to in *COBS* 11.2.32R(2).

[**Note:** article 26(4) of the *UCITS implementing Directive*]

11.2.33 G ...

11.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see *COBS* 11.2.30R to *COBS* 11.2.33G) will not apply when the *firm* which provides the services of *portfolio management* or *collective portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its ~~client's~~ *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see *COBS* 11.2.1R to *COBS* 11.2.29R).

[**Note:** article 45(7) of the *MiFID implementing Directive* and article 25 of the *UCITS implementing Directive*]

11.3 Client order handling

General principles

- 11.3.1 R (1) A firm (other than a management company providing collective portfolio management services) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.
- [**Note:** paragraph 1 of article 22(1) of *MiFID*]
- (2) ...
- (3) A management company providing collective portfolio management services, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* or *EEA UCITS scheme* it manages.
- [**Note:** article 27(1) first paragraph of the *UCITS implementing Directive*]
- 11.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:
- ...
- [**Note:** article 47(1) of *MiFID implementing Directive*, and article 19(1) of *MiFID* and article 27(1) second paragraph of the *UCITS implementing Directive*]
- ...
- 11.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or executes the order itself in the course of providing *collective portfolio management services*, it must take all reasonable steps to ensure that any *client financial instruments* or *client funds* received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.
- [**Note:** article 47(2) of *MiFID implementing Directive*, and article 19(1) of *MiFID* and article 27(1) third paragraph of the *UCITS implementing Directive*]

- 11.3.5 R A *firm* must not misuse information relating to pending *client* orders, and shall take all reasonable steps to prevent the misuse of such information by any of its *relevant persons*.

[**Note:** article 47(3) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 27(2) of the *UCITS implementing Directive*]

...

Aggregation and allocation of orders

- 11.3.7 R A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:
- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;
 - (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
 - (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[**Note:** article 48(1) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(1) of the *UCITS implementing Directive*]

- 11.3.8 R If a *firm* aggregates a *client* order with one or more other orders and the aggregated order is partially executed, it must allocate the related trades in accordance with its order allocation policy.

[**Note:** article 48(2) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(2) of the *UCITS implementing Directive*]

Aggregation and allocation of transactions for own account

- 11.3.9 R A *firm* which has aggregated transactions for own account with one or more *client* orders must not allocate the related trades in a way which is detrimental to a *client*.

[**Note:** article 49(1) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(3) of the *UCITS implementing Directive*]

- 11.3.10 R (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.

- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[**Note:** article 49(2) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(4) of the *UCITS implementing Directive*]

...

11.3.13 G In this section, carrying out *client* orders includes:

...

- (2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the services of *portfolio management* or *collective portfolio management*;

...

...

11.7 Personal account dealing

Rule on personal account dealing

11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain arrangements aimed at preventing the following activities...

- (1) entering into a *personal transaction* which meets at least one of the following criteria:

...

- (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;

...

[**Note:** article 12(1) of *MiFID implementing Directive* and article 13(1) of the *UCITS implementing Directive*]

...

11.7.4 R The arrangements required under this section must in particular ...

[**Note:** article 12(2) of *MiFID implementing Directive* and article 13(2) of the *UCITS implementing Directive*]

Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to ...
 [Note: article 12(3) of *MiFID implementing Directive* and article 13(3) of the *UCITS implementing Directive*]

11.7.6 R For the purposes of this section, a *person* who is not:

- (1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, a *tied agent*) of the *firm*; or
- (2) a director, partner or equivalent, or manager of any *appointed representative* (or, where applicable, a *tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business* or *collective portfolio management services*.

...

13.1 The obligation to prepare product information

...

Exceptions

13.1.3 R A *firm* is not required to prepare:

...

- (2) a *key features document* for:
 - (a) a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
 - (b) a *unit* in an ~~*EEA simplified prospectus scheme*~~ *EEA UCITS scheme* which is a *recognised scheme*; or

...
- (3) a *key features illustration*;
 - (a) for a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
 - (b) for a *unit* in an *EEA UCITS scheme* which is a *recognised scheme*; or
 - (c) if it includes the information from the *key features illustration* in a *key features document*; or

...

- 13.1.4 R A single *document* prepared for more than one *key features scheme*, or simplified prospectus scheme ~~or EEA simplified prospectus scheme~~ may combine more than one *key features document*, *simplified prospectus* or *EEA simplified prospectus* or any combination of them, if the *schemes* are offered through a *funds supermarket service* and the *document* clearly describes the difference between the *schemes*.

...

14.2 Providing product information to clients

The provision rules

- 14.2.1 R A *firm* that sells:
- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *UCITS scheme*, *simplified prospectus scheme*, or an *EEA simplified prospectus scheme*, or an *EEA UCITS scheme* which is a *recognised scheme*);
 - ...
 - (6) ~~a *unit* in an *EEA simplified prospectus scheme* to a *client*, must offer an up to date copy of the *scheme's EEA simplified prospectus* to that *client*; [deleted]~~
 - (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:
 - (a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and
 - (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by *COBS 13.3.1R(2)* (General requirements) and, if that *client* is present in the *EEA*, the information required by (5)(a) and (b);
 - (8) where the *operator* of a *non-UCITS retail scheme* has a dispensation from the *FSA* in the form of a *general waiver* by consent under which it may market *units* of the *scheme* on the basis of a *key investor information document* (as modified by the *general waiver direction*, a “NURS KII document”), rather than on the basis of a *key features document* or *simplified prospectus*, a *firm* that sells *units* in the *scheme* must comply with its obligations under this rule by:
 - (a) providing the *retail client* with the relevant NURS KII document; and
 - (b) offering any *client* that is not a *retail client* the relevant

NURS KII document:

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

...

[**Note:** in respect of ~~(5) and (6)~~ ~~(7)~~, articles 1, ~~33(1) and 44~~ and 80 of the *UCITS Directive*]

Provision of key investor information document

- 14.2.1A R (1) This rule applies to an authorised fund manager of a UCITS scheme that is either an authorised unit trust or an ICVC, and an ICVC that is a UCITS scheme.
- (2) An authorised fund manager and an ICVC in (1) that sells units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the key investor information document for the scheme.
- (3) An authorised fund manager and an ICVC in (1) that does not sell units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that the key investor information document for the scheme is provided on request to product manufacturers and intermediaries selling, or advising investors on, potential investments in those UCITS schemes or in products offering exposure to them.
- (4) The key investor information document must be provided to investors free of charge.
- (5) An authorised fund manager and an ICVC in (1) may, instead of providing the key investor information document to investors in paper copy in accordance with (2), provide it in a durable medium other than paper or by means of a website that meets the website conditions, in which case the authorised fund manager and ICVC must:
- (a) deliver a paper copy of the key investor information document to the investor on request and free of charge; and
- (b) make available an up-to-date version of the key investor information document to investors on the website of the ICVC or authorised fund manager.

[**Note:** articles 80 and 81 of the *UCITS Directive*]

...

Exception to the provision rules: key features documents, ~~and~~ simplified prospectuses and key investor information documents

- 14.2.5 R A *firm* is not required to provide:
- ...
- (4) a *simplified prospectus* if:
- (a) ~~another person is required to offer the *simplified prospectus* to the client by the rules of another EEA State; or [deleted]~~
- (b) ...
- ...
- ~~[Note: in respect of (4), articles 1, 33(1) and 44 of the *UCITS directive*]~~

...

Exception to the provision rules: key features documents, key features illustrations ~~and~~, simplified prospectuses and key investor information documents

- 14.2.9 R A *firm* is not required to provide a *key features document*, a *key features illustration* or a *simplified prospectus* for a *key features scheme* or *simplified prospectus scheme* if:
- ...
- ~~[Note: articles 1, 33(1) and 44 of the *UCITS directive*]~~

- 14.2.9A R For the purposes of the provision rules in relation to a *key investor information document*, a *firm*:
- (1) may satisfy the requirement to provide the document to the investor by providing it to a *person* who has written authority to make investment decisions on that investor's behalf; and
- (2) is not required to consider as a new transaction:
- (a) a subscription to *units* in a *UCITS scheme* or an *EEA UCITS scheme* in which the *client* already holds *units*; or
- (b) a series of connected transactions undertaken as the consequence of a single investment decision; or
- (c) a decision by the *client* to switch from one class of *units* to another in the same *scheme*;
- if an up-to-date version of the *key investor information document* for the *scheme* or the relevant class of *units* has already been provided

to that client.

[**Note:** article 80 of the *UCITS Directive*]

- 14.2.10 G
- (1) Although a *firm* is not always required to provide a *simplified prospectus* to a *client* (COBS 14.2.9R), the obligation to offer the prospectus to the *client* (COBS 14.2.1R(5)) remains.
 - (2) The FSA would regard a decision to subscribe to a regular monthly savings plan as a single investment decision for the purpose of COBS 14.2.9AR(2)(b). However, a subsequent decision by the client to increase the amount of the regular contributions to be invested in units of a particular scheme or to direct the contributions to a different scheme, would in each case constitute a new transaction.

Exception to the provision rules: aggregated scheme documents

- 14.2.11 R
- A *firm* may provide a single *document*, which describes more than one *key features scheme*, or simplified prospectus scheme ~~or EEA simplified prospectus scheme~~, or any combination of those *schemes*, if:
- ...
- (3) (in the case of a *simplified prospectus scheme* ~~or an EEA simplified prospectus scheme~~) the *firm* also offers ~~copies~~ a copy of the relevant ~~prospectuses~~ prospectus to the *client*.

[**Note:** article 33(1) of the *UCITS directive*]

...

The timing rules

- 14.2.14 R
- When the *rules* in this section require a *firm* to:
- (1) offer a *simplified prospectus* ~~or an EEA simplified prospectus scheme~~ to a *client*, that prospectus must be offered free of charge before the conclusion of the contract; or
 - (2) provide a *key features document*, a *simplified prospectus*, ~~an EEA simplified prospectus scheme~~ or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business; or
 - (3) provide a key investor information document or EEA key investor information document to a client, it must be provided in good time before the client's proposed subscription for units in the scheme.

[**Note:** article 33(1) ~~80~~ of the *UCITS directive* Directive]

...

Exception to the timing rules: distance contracts and voice telephony communications

- 14.2.16 R (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.
- (2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1R and COBS 14.2.1AR.
- 14.2.17 R (1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:
- (1)(a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (COBS 5 Annex 2R) orally to the *client*;
- (2)(b) if the ~~client~~ *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information (COBS 5 Annex 1R) orally to the ~~client~~ *client*;
- (3)(c) in the case of (1)(a) or (2)(b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.
- (2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1R and COBS 14.2.1AR.

...

14.3 Information about designated investments

...

- 14.3.7 G Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *simplified prospectus* may satisfy the requirements of the *rules* in this section.

...

Information about UCITS schemes

- 14.3.11 R If a *firm* provides a *client* with a ~~*simplified prospectus*~~ or an ~~*EEA simplified prospectus*~~ *key investor information document* or *EEA key investor information document* that meets the requirements of ~~article 28~~ articles 78 and 79 of the UCITS Directive (see COLL 4.7 (Key investor information and marketing communications)) and the KII Regulation, it will have provided appropriate information for the purpose of the requirement to disclose information on:

...

- 14.3.12 G A ~~*simplified prospectus*~~ provides *key investor information document* and *EEA key investor information document* provide sufficient information in relation to the costs and associated charges in respect of the *UCITS scheme* itself. However, a *firm* distributing ~~units~~ *units* in a *UCITS scheme* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS scheme*.

...

16.2 Occasional reporting

Execution of orders other than when managing investments

- 16.2.1 R ...
- (6) In relation to subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, paragraphs (1), (3) and (5) of this rule apply as if references to:
- (a) a client and to a retail client were references to a unitholder in the scheme; and
- (b) trade confirmation information in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).
- (7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, include the following information:
- (a) the identification of the management company;
- (b) the name or other designation of the unitholder;
- (c) the date and time of receipt of the order and method of

payment;

- (d) the date of execution;
- (e) the identification of the UCITS scheme or EEA UCITS scheme;
- (f) the nature of the order (subscription or redemption);
- (g) the number of units involved;
- (h) the unit price at which the units were subscribed or redeemed;
- (i) the reference valuation date;
- (j) the gross value of the order including charges for subscription or net amount after charges for redemptions; and
- (k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

[**Note:** article 40 paragraphs (1) to (4) of the *MiFID implementing Directive* and article 24 of the *UCITS implementing Directive*]

...

18.5 Operators of collective investment schemes

...

Additional application of COBS rules for management companies

18.5.2A R A management company must:

- (1) in addition to complying with the COBS rules specified in COBS 18.5.2R, comply with COBS 11.7 (Personal account dealing); and
- (2) comply with COBS 2.3 (Inducements) as modified by COBS 2.3.2AR.

[**Note:** article 13(1) to 13(4) of the *UCITS implementing Directive*]

18.9 ICVCs

- 18.9.1 R (1) Only the The financial promotion rules in COBS apply to an ICVC, except that COBS 4.13 (UCITS) applies only to an ICVC that is a UCITS scheme.
- (2) COBS 14.2 (Providing product information to clients) applies to an ICVC that is a UCITS scheme.

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>2.6A</u>	<u>COBS 14.2 and COBS 14.3</u>		(1) <u>A firm is not required to provide a <i>key investor information document</i> or <i>EEA key investor information document</i> to a client in accordance with <i>COBS 14.2</i> and <i>COBS 14.3</i> in relation to the proposed sale of a <i>unit</i> in a <i>UCITS</i>, if instead it meets the requirements of the <i>rules</i> of the <i>Handbook</i> as at 30 June 2011 in relation to the preparation, offering and provision of a <i>simplified prospectus</i> or <i>EEA simplified prospectus</i>, as if those <i>rules</i> were still in force in relation to the <i>UCITS</i>.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
			(2) Paragraph (1) does not apply where:		
			(a) <u>in the case of a <i>management company</i>, it has already published a <i>key investor information document</i> or an <i>EEA key investor information document</i>;</u> <u>or</u>		
			(b) <u>in the case of any other <i>firm</i>, the document in</u>		

				(a) has already been provided to it in accordance with the requirements of <i>COBS</i> 14.2;		
				in respect of the <i>UCITS</i> or <i>sub-fund</i> or class of <i>units</i> of the <i>scheme</i> , in relation to which a sale of <i>units</i> is proposed.		
[Note: article 118(2) of the <i>UCITS Directive</i>]						

Annex G

Amendments to the Supervision manual (SUP)

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

11.8 Changes in the circumstances of existing controllers

11.8.1 R A *firm* must notify the *FSA* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (4) if a *controller*, who is authorised in another *EEA State* as ~~an~~ a *MiFID investment firm*, ~~or~~ *BCD credit institution* or *UCITS management company* or under the *Insurance Directives* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case ~~of~~ an *IMD insurance intermediary*).

...

13 Exercise of passport rights by UK firms

13.1 Application and purpose

Application

...

13.1.3 G This chapter does not apply to:

...

- (4) the marketing of the *units* of a *UCITS scheme* by its ~~operator~~ *management company* in another *EEA State* under the *UCITS Directive* (see ~~*COLLG 2.1.8G*~~ paragraph 20B of Part III of Schedule 3 to the *Act* and *COLL 12.4 (UCITS product passport)*).

...

13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are

satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

- (1) ...
- (2) the *FSA* has given notice (known as a *consent notice*) to the *Host State regulator*; ~~and~~
- (2A) if the *UK firm's EEA right* relates to providing *collective portfolio management* services, the *FSA* has provided to the *Host State regulator*:
 - (a) confirmation that the *firm* has been *authorised* as a *management company* under the provisions of the *UCITS Directive*;
 - (b) a description of the scope of the *firm's authorisation*; and
 - (c) details of any restriction on the types of *EEA UCITS scheme* that the *firm* is *authorised* to manage; and
- (3)
 - (a) ...
 - (b) in any other case:
 - (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established ; or
 - (ii) ...

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~or *MiFID* or the *UCITS Directive*~~, the *FSA* ...
- (1A) If the *UK firm's EEA right* derives from the *UCITS Directive*, the *FSA* will give the *Host State regulator* a *consent notice* within two months unless it has reason to doubt the adequacy of the *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two months to prepare for the supervision of the *UK firm*.

...

13.3.6 G ...

(3) Where a *consent notice* is given under the *UCITS Directive*, the *FSA* will at the same time:

(a) communicate to the *Host State regulator* details of the *compensation scheme* intended to protect investors; and

(b) enclose the information described at *SUP 13.3.2G(2A)*.

...

UCITS management companies: other information to be provided to the Host State

13.3.8 G A *UK firm* seeking to provide *collective portfolio management* services from a *branch* in another *EEA State*, is advised that it will need to refer to the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive* which will require it to submit to that *competent authority* information relating to its *depository agreement* and certain *delegation arrangements*.

13.4 Providing cross border services into another EEA State

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G (1) If the *UK firm's EEA right* derives from *MiFID*, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the *notice of intention* to the *Host State Regulator* within one *month* of receipt. ~~However, a *UK firm* passporting under the *Banking Consolidation Directive* or *MiFID*~~ may start providing *cross border services* as soon as it satisfies the relevant conditions (see *SUP 13.4.2G*).

...

(2B) Where a *consent notice* is given under the *UCITS Directive*, the *FSA* will at the same time:

(a) communicate to the *Host State regulator* details of the *compensation scheme* intended to protect investors; and

(b) provide to the *Host State regulator*:

(i) confirmation that the *firm* has been *authorised* as a *management company* under the provisions of the *UCITS Directive*;

- (ii) a description of the scope of the firm's authorisation; and
- (iii) details of any restriction on the types of EEA UCITS scheme that the firm is authorised to manage.

...

Applicable provisions for cross border services

- 13.4.6 G (1) ~~If the UK firm is passporting under the UCITS Directive, then when the Host State regulator receives the notice of intention, it should inform the UK firm of any applicable provisions. [deleted]~~

...

...

UCITS management companies: other information to be provided to the Host State

- 13.4.7 G A UK firm seeking to provide collective portfolio management services in another EEA State under the freedom to provide cross border services, is advised that it will need to refer to the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive which will require it to submit to that competent authority information relating to its depositary agreement and certain delegation arrangements.

13.5 Notices of intention

...

Specified contents: notice of intention to provide cross border services

- 13.5.2 R A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right must submit a notice in the form set out in:

...

- (4) SUP 13 Annex 6R, if the UK firm is a management company passporting under the UCITS Directive.

...

13 Annex 1R **Passporting: Notification of intention to establish a branch in another EEA state**

...

[see next page]

Financial Services Authority

Passporting

Notification of intention to establish a branch in another EEA state



(SUP 13 Annex 1 R – Notification under SUP 13.5.1 R)

Full name of firm

Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to establish your first *branch* in a particular *EEA State*. You should also use this form if you are a *UK firm* that wishes to notify us – the *FSA* – of changes to the details of your current *branch*.

Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to establish a *branch* in another *EEA State* subject to the conditions of a relevant *single market directive* (see Schedule 3 of the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take their own legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (*SUP*). In particular, a *UK firm* that wants to exercise an *EEA right* must have the specific activity included in its Scope of Permission (unless the *UK firm* is a *subsidiary* of a *firm* which is a *credit institution* that meets the criteria set out in the *Banking Consolidation Directive*).

Filling in the Form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 10.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 10.
3. All firms should answer sections 1, 2 and 10. Sections 3-9 refer to specific directives and only relevant sections should be completed. However, please answer all questions in the sections relevant to you.
4. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS
UK
Telephone: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 9798
Website: www.fsa.gov.uk

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

...

9 Undertakings for Collective Investment in Transferable Securities

9.1 You must select those activities that you wish to carry out under the *UCITS Directive* as listed in article 6(2) and (3) of the *UCITS Directive*.

<u>Management of <i>UCITS</i></u>	<input type="checkbox"/>
<u>Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where those portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>.</u>	<input type="checkbox"/>
<u>Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>.</u>	<input type="checkbox"/>
<u>Safekeeping and administration in relation to <i>units</i> of collective investment undertakings.</u>	<input type="checkbox"/>

9.2 Please give details of the *firm's* programme of operations

Note to Question 9.2

Provide a programme of operations setting out the activities and services envisaged according to article 6(2) and (3) and the organisational structure of the *branch* which must include a description of the risk management process.

Provide also a description of the procedures and arrangements for dealing properly with investor complaints, including how it is ensured that there are no restrictions on investors exercising such rights and the arrangements for making information available at the request of the public or the *competent authority* of the *UCITS Home State*.

For a suggested template *firms* may adhere to question 4.2 when preparing a programme of operations

Note: Other Requirements for UCITS management companies

In addition to the submission of this notice to the FSA, management companies should note, where the application is to manage a UCITS in another EEA State, they will be required by the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive to provide them with:

- (1) the written agreement that has been entered into with the depositary; and
- (2) information on delegation arrangements regarding the functions of investment management and administration, as referred to in Annex II to the UCITS Directive.

If the management company already manages other UCITS of the same type as the company is proposing to manage in the UCITS Home State, article 20 provides that reference to the documentation already provided shall be sufficient for the purposes of (1) and (2).

9.3 Please confirm if the information referred to above has been submitted to the competent authority of the UCITS Home State. If it has not been submitted or if article 20 is not applicable please explain why, including (if applicable) when it is expected that the information will be provided.

910 Declaration

...

I enclose the following sections (mark the appropriate section) *

Section 1 – Contact Details (mandatory)

...

Section 9 - Undertakings for Collective Investments in Transferable Securities

Section 910 – Declaration (mandatory)

...

...

After SUP 13 Annex 5 insert the following new annex. The text is not underlined.

13 Annex 6R Passporting: UCITS Directive

[see next page]

Financial Services Authority

Passporting

Notification of intention to provide cross border services in another EEA state



(SUP 13 Annex 6R – Notification under SUP 13.5.2R)

Full name of firm

Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to provide *cross border services* in another *EEA State* under the Undertakings for Collective Investment in Transferable Securities Directive (“the *UCITS Directive*”).

You may also use this form if you are a *UK firm* that wishes to notify us (the *FSA*) of changes to the details of its current *cross border services*.

Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to provide *cross border services* into another *EEA State* subject to the conditions of the *UCITS Directive* (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (*SUP*). In particular, a *UK firm* that wants to exercise an *EEA right* must have the specific activity included in its Scope of Permission.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
3. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly, mark each separate sheet of paper with the relevant question number.

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

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: www.fsa.gov.uk

1 Contact details

1.1 Details of the person we will contact about this application

FSA reference number	
Contact name	
Telephone number	
Fax number	
Email address	

2 Details of the services to be provided

2.1 Please indicate the *EEA State(s)* into which services are to be provided.

Note to Question 2.1

UK firms have the right to provide *cross border services* to Gibraltar. References in this form to an *EEA State* include references to Gibraltar (see the Financial Services and Markets Act (Gibraltar) Order 2001).

States required	
Austria	<input type="checkbox"/>
Belgium	<input type="checkbox"/>
Bulgaria	<input type="checkbox"/>
Cyprus	<input type="checkbox"/>
Czech Republic	<input type="checkbox"/>
Denmark	<input type="checkbox"/>
Estonia	<input type="checkbox"/>
Finland	<input type="checkbox"/>
France	<input type="checkbox"/>
Germany	<input type="checkbox"/>
Gibraltar	<input type="checkbox"/>
Greece	<input type="checkbox"/>
Hungary	<input type="checkbox"/>
Iceland	<input type="checkbox"/>
Ireland	<input type="checkbox"/>
Italy	<input type="checkbox"/>
Latvia	<input type="checkbox"/>
Liechtenstein	<input type="checkbox"/>
Lithuania	<input type="checkbox"/>
Luxembourg	<input type="checkbox"/>
Malta	<input type="checkbox"/>
Netherlands	<input type="checkbox"/>
Norway	<input type="checkbox"/>
Poland	<input type="checkbox"/>
Portugal	<input type="checkbox"/>
Romania	<input type="checkbox"/>
Slovak Republic	<input type="checkbox"/>
Slovenia	<input type="checkbox"/>
Spain	<input type="checkbox"/>
Sweden	<input type="checkbox"/>
All States	<input type="checkbox"/>

2.2 If the *firm* intends to provide services into more than one *EEA State*, will these services vary for each State?

- Yes ▶
- No ▶

2.3 Tell us the proposed date for the business to start.

Date	dd/mm/yy
------	----------

3 Undertakings for Collective Investment in Transferable Securities

3.1 You must select those activities that you wish to carry out under the *UCITS Directive* as listed in article 6(2) and (3) of the *UCITS Directive*.

Management of <i>UCITS</i>	<input type="checkbox"/>
Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where those portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	<input type="checkbox"/>
Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	<input type="checkbox"/>
Safekeeping and administration in relation to <i>units</i> of collective investment undertakings.	<input type="checkbox"/>

3.2 Please give details of the *firm's* programme of operations

Note to Question 3.2

Provide a programme of operations setting out the activities and services envisaged according to article 6(2) and (3) which must include a description of the risk management process.

Provide also a description of the procedures and arrangements for dealing properly with investor complaints, including how it is ensured that there are no restrictions on investors exercising such rights and the arrangements for making information available at the request of the public or the *competent authority* of the *UCITS Home State*.

Note: Other Requirements for UCITS management companies

In addition to the submission of this notice to the *FSA*, *management companies* should note, where the application is to manage a *UCITS* in another *EEA State*, they will be required by the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive* to provide them with:

- (1) the written agreement that has been entered into with the *depository*; and
- (2) information on delegation arrangements regarding functions of investment management and administration, as referred to in Annex II to the *UCITS Directive*.

If the *management company* already manages other *UCITS* of the same type as the company is proposing to manage in the *UCITS Home State*, article 20 provides that reference to the documentation already provided shall be sufficient for the purposes of (1) and (2).

- 3.3 Please confirm if the information referred to above has been submitted to the competent authority of the UCITS Home State. If it has not been submitted or if article 20 is not applicable please explain why, including (if applicable) when it is expected that the information will be provided.**

4 Declaration

Note to Declaration

If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the *firm*.

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please seek appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. And failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

- I understand it is a criminal offence knowingly or recklessly to give the *FSA* information that is false or misleading in a material particular.
- I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.
- I confirm that I am authorised to sign on behalf of the *firm*.

Name	
------	--

Position	
Signature	
Date	dd/mm/yy

I enclose the following sections

Section 1 – Contact details

Section 2 – Details of the services

Section 3 – Undertakings for Collective Investment
in Transferable Securities

Section 4 – Declaration

Where to send this form

- 1) Please address the form to:
 - (a) a member of or for the attention of our Passport Notification Unit, or if submitted with an application for *Part IV permission*, our Authorisation Department; and
 - (b) send it to us by one of the methods described in (2) below.

- (2) Please send the form by:
 - (a) emailing it to passport.notifications@fsa.gov.uk, if not submitted with an application for *Part IV Permission*; or
 - (b) leaving the application at our Canary Wharf office (see (a) above) and obtaining a time-stamped receipt; or
 - (c) posting it to The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
 - (d) hand delivering it to a member of the Passport Notification Unit or, if submitted with an application for *Part IV permission*, to the Authorisation Department; or
 - (e) faxing it to the Passport Notification Unit on 020 7066 9798 (if not submitted with an application for *Part IV Permission*).

If you have any questions or need additional information, please contact the Passport Notification Unit on 020 7066 1000 or email passport.notifications@fsa.gov.uk.

Amend the following as shown.

13A.3 Qualifications for authorisation under the Act

...

- 13A.3.1C G (1) Under paragraph 15A(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right to provide collective portfolio management services for a UCITS scheme must, before it undertakes that activity, obtain the FSA's approval to manage that UCITS scheme. Firms should use the application form set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.
- (2) If the FSA refuses the application referred to in (1), it will give a notice to the firm and the firm's Home State regulator in accordance with paragraph 15A of Part II of Schedule 3 to the Act. Before refusing an application, the FSA will consult with the firm's Home State regulator.
- (3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FSA by a firm to which the notice referred to in (2) has been given, the FSA is required to decide whether to withdraw that notice. If the FSA decides not to withdraw that notice it must give the firm a decision notice.
- (4) For details of the FSA's procedures for the giving of notices see DEPP 2 (Statutory notices and allocation of decision making).

...

- 13A.3.2 G (1) On qualifying for authorisation, subject to ~~SUP 13A.3.2G(2)~~ SUP 13A.3.1CG(1), an EEA firm will have permission to carry on each permitted activity (see (3) below) which is a regulated activity.
- (2) (a) ~~Paragraph (1) does not apply to the activity of dealing in units in a collective investment scheme in the United Kingdom where:~~
- (i) ~~the firm is an EEA UCITS management company;~~
 - (ii) ~~the firm satisfies the establishment conditions in SUP 13A.4.1G; and~~
 - (iii) ~~the FSA notifies the EEA firm and the EEA firm's Home State regulator that the way in which it intends to market a relevant scheme in the United Kingdom does not comply with the law in force in the United Kingdom.~~

- (b) ~~The FSA's notice under (2)(a)(iii) has to be given to the EEA firm within two months of receiving the consent notice (see paragraph 13(1) of Part II of Schedule 3 to the Act) and will be similar to a warning notice.~~
- (c) ~~For details of the FSA's procedures for the giving of warning notices see DEPP 2 (Statutory notices and allocation of decision making). [deleted]~~

...

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

13A.4.1 ...

13A.4.1A G An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme from a branch in the United Kingdom until approved by the FSA to do so (see SUP 13A.3.1CG).

...

13A.5 EEA firms providing cross border services into the United Kingdom

...

The conditions for providing cross border services into the United Kingdom

13A.5.3 G ...

(3) An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme on a cross border services basis until approved by the FSA to do so (see SUP 13A.3.1CG).

...

13A.5.5 G An EEA firm (other than an EEA UCITS management company) that has satisfied the service conditions in paragraph 14 of Part II of Schedule 3 to the Act is entitled to start providing cross border services into the United Kingdom. In the case of an EEA UCITS management company, FSA approval must first be obtained, as explained in SUP 13A.5.3G (see also SUP 13A.3.1CG). However, an EEA firm that wishes to start providing cross border services but has not yet received notification of the applicable provisions may wish to contact the FSA's Passport Notifications Unit (see SUP 13A.8.1G(2)).

...

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

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
SYSC	<p>...</p> <p>SYSC 1 Annex 1.2.7G reminds <i>EEA MiFID investment firms</i> that they must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i>.</p> <p><u>SYSC 1 Annex 1, Part 2, 2.7AG provides guidance on the application of the common platform requirements to the UK branch of an EEA UCITS management company.</u></p> <p>SYSC 9 ...</p> <p>...</p>	...
...		
COLL	<u>The following provisions of COLL apply to an EEA UCITS management company providing collective portfolio management services for</u>	As column (2)(d), (e), (f) and (g) and the other parts of <u>COLL specified.</u>

	<p><u>a UCITS scheme:</u></p> <p><u>(a) COLL 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);</u></p> <p><u>(b) COLL 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);</u></p> <p><u>(c) COLL 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);</u></p> <p><u>(d) COLL 12.3.4R (Provision of documentation to the FSA: EEA UCITS management companies);</u></p> <p><u>(e) the fund application rules (see COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules);</u></p> <p><u>(f) COLL 12.3.6R (Requirement to make information available to the public or the FSA);</u></p> <p><u>(g) COLL 12.3.7G (EEA UCITS management companies: compliance with FSA rules); and</u></p> <p><u>(h) COLL 12.3.8G (EEA UCITS management companies: conduct of business rules).</u></p>	
--	--	--

	<p><u>An EEA UCITS management company providing collective portfolio management services for a UCITS scheme</u> should be aware that it will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, COLL apply if the firm:</p> <p>(a) is the operator or depositary of an AUT or ICVC; or [deleted]</p> <p>(b) wishes to apply for an authorisation order to establish an AUT or ICVC as a UCITS scheme; or</p> <p>(ba) is the management company of a UCITS scheme that wishes to exercise an EEA right to market its units in another EEA State; or</p> <p>(c) is the operator of a recognised scheme; or</p> <p>(d) wishes to apply for recognition of a recognised scheme.</p>	
...		

13A Annex 2G Matters reserved to a Home State regulator

...
Application of the common platform requirements in SYSC to EEA MiFID investment firms

8	Whilst the <i>common platform requirements</i> (located in SYSC 4 – SYSC 10) do not generally apply to <i>incoming EEA firms</i> (but for <i>EEA UCITS management companies</i> , see 8A below), <i>EEA MiFID investment firms</i> must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i> .
<u>Application of SYSC to EEA UCITS management companies</u>	
8A	<u>SYSC 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7AG provides guidance on the application of the <i>common platform requirements</i> to the <i>UK branch</i> of an <i>EEA UCITS management company</i>.</u>
...	
<u>Requirements under the UCITS Directive</u>	
11A	<u>Article 19(8) of the <i>UCITS Directive</i> prohibits an <i>EEA State</i> from imposing additional requirements on a <i>management company</i> providing <i>collective portfolio management</i> services for a <i>UCITS</i> in its territory on a cross-border basis by establishing a <i>branch</i> or under the freedom to provide <i>cross border services</i> in respect of the subject matter of the <i>UCITS Directive</i>, except in the cases expressly permitted (see 11C below).</u>
11B	<u>A <i>management company</i> which provides <i>collective portfolio management</i> services on a cross-border basis by establishing a <i>branch</i> in another <i>EEA State</i> or under the freedom to provide services must comply with the <i>rules</i> of the <i>UCITS Home State</i> which relate to the constitution and functioning of the <i>UCITS</i>. Where the <i>UCITS Home State</i> is the <i>United Kingdom</i>, the applicable <i>rules</i> that the <i>EEA UCITS management company</i> must comply with are as follows:</u>
	(1) <u><i>COLL 12.3.4R</i> (Provision of documentation to the FSA: <i>EEA UCITS management companies</i>);</u>
	(2) <u>the <i>fund application rules</i> (see <i>COLL 12.3.5R</i> (<i>COLL fund rules</i> under the management company passport: the fund application rules)); and</u>
	(3) <u><i>COLL 12.3.6R</i> (Requirement to make information available to the public or the FSA).</u>
11C	<u>A <i>management company</i>, however, which provides <i>collective portfolio management</i> services from a <i>branch</i> in another <i>EEA State</i>, is obliged under article 17(4) to comply with the applicable rules of the <i>Host State regulator</i> drawn up under article 14(1) that require a <i>management company</i> to:</u>
	(1) <u>act honestly and fairly in conducting its business activities in the best interests of the <i>UCITS</i> it manages and the integrity of</u>

		<u>the market;</u>
	(2)	<u>act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;</u>
	(3)	<u>have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;</u>
	(4)	<u>try to avoid conflicts of interests and, when they cannot be avoided, to ensure that the UCITS it manages is fairly treated;</u> <u>and</u>
	(5)	<u>comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.</u>
11D	<u>The rules implementing the requirements set out in paragraph 11C (1) to (5) are as follows:</u>	
	(1)	<u>SYSC, to the extent indicated in column A+ (Application to management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and</u>
	(2)	<u>COBS, to the extent indicated at paragraph 9.1 of Part 3 of COBS 1 Annex 1 (Application).</u>
	(3)	<u>COLL 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders) (branch only);</u>
	(4)	<u>COLL 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) (branch only); and</u>
	(5)	<u>COLL 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company) (branch only).</u>
<u>Territorial application of the Handbook</u>		
12	...	
...		

After SUP 13A Annex 2G insert the following new annex. The text is not underlined.

13A Annex 3R EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* must, before it undertakes that activity, obtain the *FSA's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FSA*.

Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).	
Name and registered address of <i>management company</i> :	
Contact details for the person submitting the application (including telephone number and email address):	
<i>EEA State</i> in which <i>management company</i> is authorised:	
Details of <i>competent authority</i> providing authorisation of the <i>management company</i> :	
Set out details of the scope of authorisation of the <i>management company</i> including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation:	
Name of each <i>UCITS scheme</i> to which this application for approval relates:	
Is the <i>management company</i> authorised to manage the type of <i>UCITS scheme</i> to which this approval relates? If not provide details:	
Has the <i>management company</i> submitted the information required by <i>COLL 12.3.4R</i> (Provision of documentation to the <i>FSA</i> : <i>EEA UCITS management companies</i>), including the depositary agreement and information on delegation arrangements? Provide details:	

Signed by: Title: Dated:
When completed send this form to: CIS Authorisations The Financial Services Authority 25 the North Colonnade London. E14 5HS Or electronically to: cis@fsa.gov.uk

Amend the following as shown.

15.8 Notification in respect of particular products and services

...

Delegation by UK UCITS management companies

- 15.8.6 R ~~A *UCITS management company* must notify the *FSA* as soon as reasonably practicable if it delegates any of its functions to a third party.~~
If a *UK UCITS management company* intends to delegate to a third party any one or more of its functions for the more efficient conduct of its business, it must first inform the *FSA* in an appropriate manner.

[Note: article 13(1)(a) of the *UCITS Directive*]

- 15.8.7 G A *UK UCITS management company* which delegates any of its functions to a third party must, as well as complying with *SUP* 15.8.6R, comply with the requirements in *SYSC* 8.1.13R (Additional requirements for a management company) and *COLL* 6.6.15AR(2).

...

Appendix 3 Guidance on passporting issues

...

App 3.9.6 G Activities set out in Article 5 6(2) and (3) of the UCITS Directive

...

Annex H

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

- 2.5.16 G A notice under ~~section 264(2)~~ of paragraph 15A(4) of Schedule 3 to the Act (~~notification of non-compliance with UK law~~) relating to a collective investment scheme constituted in another *EEA State* the application by an EEA firm for approval to manage a UCITS scheme is not a *warning notice*, but the FSA will operate a procedure for a ~~section 264(2)~~ this notice which will be similar to the procedure for a *warning notice*.

...

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

...

Section of the Act	Description	Handbook reference	Decision maker
...			
<u>252A(4)(b)/ (6)(a)</u>	<u>when the FSA is proposing or deciding to refuse approval of a proposal by the manager of a feeder UCITS to make an alteration to the trust deed to enable the feeder UCITS to convert into a UCITS scheme which is not a feeder UCITS</u>	<u>COLL 11</u>	<u>Executive procedures</u>
...			
264(2)/265(4)	when the FSA is notifying or deciding not to withdraw a notice, to the operator and relevant EEA State authorities, that the way in which a collective investment scheme constituted in another EEA State intends to invite persons in the United Kingdom to participate in the scheme does not comply with UK law [deleted]	COLL 9 See DEPP 2.5.16G	Executive procedures
...			

<p><u>Paragraph 15A(4) of Schedule 3</u></p>	<p>when the <i>FSA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i>, or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i></p>	<p><i>SUP 13A</i> <i>See DEPP 2.5.16 G</i></p>	<p><i>Executive procedures</i></p>
<p>Paragraph 15A(5) of Schedule 3</p>	<p>when the <i>FSA</i> is notifying or deciding not to withdraw a notice issued to an <i>EEA UCITS management company</i> wishing to deal in units in a <i>collective investment scheme</i> in the <i>United Kingdom</i> and relevant <i>EEA State</i> authorities, that the way in which the <i>EEA UCITS management company</i> intends to market a <i>relevant scheme</i> in the <i>United Kingdom</i> does not comply with <i>UK law</i> [deleted]</p>	<p><i>SUP 13A</i></p>	<p><i>Executive procedures</i></p>
<p><u>Paragraph 15B(3)(a) of Schedule 3</u></p>	<p>when the <i>FSA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i>, or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i></p>	<p><i>SUP 13A</i></p>	<p><i>Executive procedures</i></p>

...

<p>OEIC Regulations reference</p>	<p>Description</p>	<p>Handbook reference</p>	<p>Decision maker</p>
--	---------------------------	----------------------------------	------------------------------

...			
<u>Regulation 22A(5)(b)/(8) (a)</u>	when the <i>FSA</i> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of incorporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	<u>COLL 11</u>	<u>Executive procedures</u>
...			

Annex I

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

...

Chapter 1: Treating complainants fairly

DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA* and certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*.

...

1.1 Purpose and application

Purpose

- 1.1.1 G This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom* ~~or~~ by certain *branches* of *firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

Application to firms

- 1.1.3 R ...
- (3) The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*.

...

Application to UCITS management companies

- 1.1.10E R For *complaints* related to *collective portfolio management services* of a *UK UCITS management company* for a *UCITS scheme* or an *EEA UCITS scheme*, *DISP* 1.1.3R(1) applies, except where modified as follows:

- (1) the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and
- (2) the consumer awareness rules, the complaints handling rules and the complaints record rule, as modified in (1), also apply where the services are provided from a branch in another EEA State (and any reference to respondent in the consumer awareness rules includes such a branch):

1.1.10F **R** For complaints related to collective portfolio management services of an EEA UCITS management company for a UCITS scheme, DISP 1.1.3R(1) applies, except where modified as follows:

- (1) where the services are provided from a branch in the United Kingdom, the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and
- (2) this chapter, except the consumer awareness rules, complaints handling rules, complaints record rule and complaints data publication rules, also applies to an EEA UCITS management company providing services in the United Kingdom under the freedom to provide cross border services.

...

1.1.12 **R** (1) A firm, payment service provider or electronic money issuer falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the FSA, claim exemption from the rules relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

- (2) Notwithstanding (1):
 - (a) the *complaints handling rules* and *complaints record rule* will continue to apply in respect of *complaints* concerning *MiFID business*; and
 - (b) the consumer awareness rules, the complaints handling rules and the complaints record rule will continue to apply in respect of complaints concerning the provision of collective portfolio management services.

...

1.2 Consumer awareness rules

Publishing and providing summary details

1.2.1 R ...

[Note: article 15 of the UCITS Directive]

...

1.2.3 G These summary details should cover at least:

(1) ...

(2) (where the complaint falls within the jurisdiction of the Financial Ombudsman Service) that, if the complaint is not resolved, the complainant may be entitled to refer it to the Financial Ombudsman Service.

...

1.2.5A G DISP 1.2.5G does not apply to a branch of a UK UCITS management company in another EEA State.

1.3 Complaints handling rules

1.3.1 R ...

[Note: article 10 of the MiFID implementing Directive and article 6(1) of the UCITS implementing Directive]

1.3.1A R ...

[Note: article 6(3) of the UCITS implementing Directive]

Procedures for UCITS management companies

1.3.1B R A UK UCITS management company must ensure that the procedures it establishes under DISP 1.3.1R for the reasonable and prompt handling of complaints require that:

(1) there are no restrictions on unitholders exercising their rights in the event that the UCITS is authorised in an EEA State other than the United Kingdom; and

(2) unitholders are allowed to file complaints in any of the official languages of the Home State of the UCITS scheme or EEA UCITS scheme or of any EEA State to which a notification has been transmitted by the competent authority of the scheme's Home State in accordance with article 93 of the UCITS Directive.

[Note: article 15 of the UCITS Directive]

...

1.5 Complaints resolved by close of the next business day

1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the *business day* following its receipt:

...

- (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and

...

...

1.9 Complaints record rule

1.9.1 R A *firm*, including, in the case of *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*, a *branch of a UK firm* in another *EEA State*, must keep a record of each *complaint* received and the measures taken for its resolution and retain that record for:

- (1) at least five years where the *complaint* relates to *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[**Note:** article 10 of the *MiFID implementing Directive* and article 6(2) of the *UCITS implementing Directive*]

...

1 Annex 2G Application of DISP 1 to type of respondent

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm (other than a UCITS management company when providing collective portfolio management services in</i>	...					

<u>respect of a UCITS scheme or an EEA UCITS scheme</u>) in relation to <i>complaints concerning non-MiFID business</i>						
<i>firm</i> in relation to <i>complaints concerning MiFID business</i>	...					
<u>UK UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the freedom to provide cross border services.</u>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<u>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</u>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Does not apply</u>	<u>Applies for unitholders</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an</u>	...					

<i>EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>						
<i>branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	...					
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	...					
<i>branch of an EEA firm in relation to complaints concerning MiFID business</i>	...					
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>
<i>incoming EEA UCITS</i>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies for eligible</u>	<u>Does not apply</u>	<u>Applies for eligible</u>	<u>Does not apply</u>

<u>management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</u>			<u>complainants</u>		<u>complainants</u>	
...						

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers ~~only~~ *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*) or of an *electronic money issuer* (including *agents* of an *electronic money institution*) carried on from an establishment in the *United Kingdom*.
- (2) The *Compulsory Jurisdiction* also covers *complaints* about *collective portfolio management services* provided by an *EEA UCITS management company* managing a *UCITS scheme* from an establishment in another *EEA State* under the freedom to provide *cross border services*.
- 2.6.2 G This:
- (1) includes incoming *EEA firms*, incoming *EEA authorised payment institutions*, incoming *EEA authorised electronic money institutions* and *incoming Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* (other than *complaints* about *collective portfolio management services* provided by an *EEA UCITS management company* in managing a *UCITS scheme*).

...

Schedule 1 Record keeping requirements

...

Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP 1.9.1 R</i>	...			5 years for <i>complaints</i> relating to <i>MiFID business</i> or <i>collective portfolio management services</i> and 3 years for all other <i>complaints</i>

Annex J

Amendments to the Compensation sourcebook (COMP)

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

- 5.5.2 R *COMP 5.5.1R* only applies if the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; or
 - (2) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm* established in another *EEA State*; or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than ~~of a collective investment scheme~~ *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*);

and the *claim* is an *ICD claim*; or
 - (3) both (1) and (2); or
 - (4) (a) a *UK branch* of an *EEA UCITS management company*; or
 (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on;

and in either case the *management company* is providing *collective portfolio management* services for a *UCITS scheme* but only if the *claim* relates to that activity.
- ...
- 6.2.2 G (1) ~~An incoming *EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, or a *MiFID investment firm* or a *UCITS management company*, and its appointed representatives are not relevant persons in relation to the *firms's* *passported activities*, unless it has *top-up cover* (and in the case of a *UCITS management company*, only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*). (See definition of “*participant firm*”).~~
- (2) An *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, is a

relevant person to the extent that it carries on those services.

- (3) An EEA UCITS management company carrying on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments, is not a relevant person in relation to those activities, unless it has top-up cover.

...

- 14.1.4 G (1) An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, or an MiFID investment firm or a UCITS management company is not a participant firm in relation to its passported activities unless it “tops-up” into the compensation scheme (for a UCITS management company, this is only for certain passported activities). This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-passported activities (~~or, for a UCITS management company, certain passported activities~~) for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.

- (2) Whether an incoming EEA firm which is an EEA UCITS management company is a participant firm in relation to its passported activities depends on the nature of its activities. In so far as it carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments, it is not a participant firm unless it “tops-up” into the compensation scheme. To the extent that such a firm provides collective portfolio management services for a UCITS scheme from a branch in the United Kingdom or under the freedom to provide cross border services, it is a participant firm in respect of those services.

- 14.1.5 G In relation to an *incoming EEA firm’s passported activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Deposit Guarantee Directive*, *Investors Compensation Directive* and ~~article 5(3)~~ article 6(3) of the *UCITS Directive*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. (For a an EEA UCITS management company, this is only for certain *passported activities, namely managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments.*) ...

...

- 14.2.3 G A notice under *COMP 14.2.1R* should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be:
 - (a) a *credit institution*; or
 - (b) an *IMD insurance intermediary*; or
 - (c) ~~an~~ a *MiFID investment firm*; or
 - (d) a *UCITS management company* that carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments;
- (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
- (3) the scope and/or level of cover provided by the *firm's Home State* compensation scheme must be less than that provided by the *compensation scheme*.

After COMP 14.4 insert the following new section. The text is not underlined.

14.5 EEA UCITS management companies

- 14.5.1 R Where an *EEA UCITS management company* provides *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, the *FSCS* must allocate the *firm* to the *sub-class* or *sub-classes* which seems to the *FSCS* to be most appropriate, taking into account the nature of the *firm's* business activities.

Annex K

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Application

- 1.1.1 G (1) This sourcebook, except for *COLL* 9 (Recognised schemes), applies to:
- ...
- (b) *ACDs*, other *directors* and *depositories* of *ICVCs*; ~~and~~
- (c) *managers* and *trustees* of *authorised unit trust schemes* (*AUTs*);
and
- (d) to the extent indicated, *UK UCITS management companies* operating *EEA UCITS schemes*.
- (2) ...
- (3) *COLL* 11.5 (Auditors) also applies to auditors of *master UCITS* and *feeder UCITS* which are *UCITS schemes*.
- (4) This sourcebook also applies to *EEA UCITS management companies* of *UCITS schemes* to the extent required by the *UCITS Directive*.

...

EEA territorial scope: compatibility with European law

- 1.1.1B R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.
- (2) This rule overrides every other rule in this sourcebook.

EEA UCITS management companies of UCITS schemes

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

Purpose

1.1.2 G ...

- (2) In addition, this sourcebook implements part of the requirements of the *UCITS Directive* to meet *EU* law obligations relevant to *authorised funds and management companies*, with other requirements implemented in other parts of the *Handbook*.

UCITS management company and product passport

1.1.2A G *COLL 12* provides for the application of *COLL* in relation to the *management company passport* under the *UCITS Directive*. It explains how the *passporting regime* applies to both *UK UCITS management companies* and *EEA UCITS management companies* when providing *collective portfolio management services* on a cross-border basis. It also explains how the *product passport* (for *UCITS*) operates and how *UCITS schemes* may be marketed in other *EEA States*.

...

Umbrella schemes

1.2.1A G *Any authorised fund* may be structured as an *umbrella* with separate *sub-funds*.

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

...

UCITS schemes

1.2.3 R *A UCITS scheme* is deemed to be established in the *United Kingdom*, irrespective of whether it has been established under the laws of *England and Wales, Scotland or Northern Ireland*.

[**Note:** article 4 of the *UCITS Directive*]

Master UCITS

1.2.4 R *A master UCITS* that has two or more *feeder UCITS* as its only *unitholders* satisfies the requirement that a *UCITS scheme* must invest capital raised from the public.

[**Note:** article 58(4) of the *UCITS Directive*]

...

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

2.1.5 G An *EEA UCITS management company* that proposes to act as the *manager* of an *AUT* or the *ACD* of an *ICVC* that is a *UCITS scheme*, should be aware that

it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the FSA for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the FSA certain fund documentation, as specified by COLL 12.3.4R (Provision of documentation to the FSA: EEA UCITS management companies).

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

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)

...	
	<u>Feeder UCITS</u>
<u>7D</u>	<u>For a feeder UCITS, a statement that it is a feeder UCITS and as such will permanently invest at least 85% in value of the scheme property in units of a single master UCITS.</u>
...	

...

UCITS obligations

- 3.2.8 R ...
- (2) ~~If it is proposed to market units of a UCITS scheme in any EEA State other than the United Kingdom, the authorised fund manager of that scheme must notify the FSA of its proposal, specifying the EEA State concerned. [deleted]~~
- (3) ~~The ICVC or the manager must make the notification in (2) no later than the notification to the authorities in that EEA State of that proposal. [deleted]~~

...

~~Availability of prospectus and long report~~ Provision and filing of the prospectus

- 4.2.3 R (1) ~~An ICVC or the manager of an AUT~~ The authorised fund manager of an AUT or an ICVC must:
- (a) ~~supply~~ provide a copy of the scheme's most recent prospectus drawn up and published in accordance with COLL 4.2.2R (Publishing the prospectus) free of charge to any person on request; and

- (b) file a copy of the *scheme's* original *prospectus*, together with all revisions thereto, with the *FSA* and, where a *UCITS scheme* is managed by an *EEA UCITS management company*, with that company's *Home State regulator* on request.
- (1A) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* may be provided in a *durable medium* or by means of a website that meets the *website conditions*.
- (2) An *ICVC* or the *manager* of an *AUT* which in either case is a *UCITS scheme* intending to market *units* in the territory of another *EEA State* must:
- (a) ensure that the following *documents* are drawn up in the, or one of the, official languages of the *EEA State* or a language approved by the *Host State regulator*:
- (i) the *prospectus*;
 - (ii) the *instrument constituting the scheme*; and
 - (iii) the latest annual and half-yearly long reports of the *scheme*;
- (b) supply copies of the most recent version of the *documents* in (a) to any purchaser of *units* free of charge on request; and
- (c) file copies of the most recent version of the *documents* in (a) with the *competent authority* of each such *Host State*, provided in the language or one of the languages of that *State* or a language approved by the *competent authority* of that *State*.
[deleted]

...

[Note: articles 74, 75(1) and 75(2) of the *UCITS Directive*]

Provision and filing of the prospectus of a master UCITS

- 4.2.3A R (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must:
- (a) where requested by an investor, provide a copy of the *prospectus* of its *master UCITS* free of charge; and
 - (b) file a copy of the *prospectus* of its *master UCITS* and any amendments thereto with the *FSA*.
- (2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* of the *master UCITS* may be provided in a *durable medium* other than paper or by

means of a website that meets the *website conditions*.

[**Note:** articles 63(3), 63(5), 75(1) and 75(2) of the *UCITS Directive*]

...

Table: contents of the prospectus

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

...		
Investment objectives and policy		
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :	
	...	
	(ka)	where a <i>scheme</i> is a feeder scheme (<u>other than a feeder UCITS</u>), which (in respect of investment in <i>units</i> in <i>collective investment schemes</i>) is <i>dedicated</i> to <i>units</i> in a single <i>collective investment scheme</i> , details of the master <i>scheme</i> and the minimum (and, if relevant, maximum) investment that the feeder <i>scheme</i> may make in it;
	...	
	(r)	where the net asset value of a <i>UCITS scheme</i> is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; and
	(s)	for a <i>UCITS scheme</i> , a statement that any <i>unitholder</i> may obtain on request the types of information (which must be listed) referred to in <i>COLL 4.2.3R(3)</i> (Availability of prospectus and long report); <u>and</u>
	(t)	<u>for a UCITS scheme that is or is intended to be a master UCITS, a statement that it is not a feeder UCITS and will not hold units of a feeder UCITS.</u>
	...	
Contracts and other relationships with parties		
11	The following relevant details:	
	...	
	(g)	what functions (if any) the authorised fund manager has

		delegated and to whom; and a list of:
	(i)	<u>the functions which the <i>authorised fund manager</i> has delegated in accordance with <i>FSA rules</i> or, for an <i>EEA UCITS management company</i>, in accordance with applicable <i>Home State</i> measures implementing article 13 of the <i>UCITS Directive</i>; and</u>
	(ii)	<u>the <i>person</i> to whom such functions have been delegated; and</u>
	...	
<u>Information on a feeder UCITS</u>		
25A	<u>In the case of a <i>feeder UCITS</i>, the following information:</u>	
	(a)	<u>a declaration that the <i>feeder UCITS</i> is a feeder of a particular <i>master UCITS</i> and as such permanently invests at least 85% in value of the <i>scheme property</i> in <i>units</i> of that <i>master UCITS</i>;</u>
	(b)	<u>the investment objective and policy, including the risk profile; and whether the performance records of the <i>feeder UCITS</i> and the <i>master UCITS</i> are identical, or to what extent and for which reasons they differ, including a description of how the balance of the <i>scheme property</i> which is not invested in <i>units</i> of the <i>master UCITS</i> is invested in accordance with <i>COLL 5.8.3R</i> (Balance of scheme property: investment restrictions on a feeder UCITS);</u>
	(c)	<u>a brief description of the <i>master UCITS</i>, its organisation, its investment objective and policy, including the risk profile, and an indication of how the <i>prospectus</i> of the <i>master UCITS</i> may be obtained;</u>
	(d)	<u>a summary of the <i>master-feeder agreement</i> or where applicable, the internal conduct of business rules referred to in <i>COLL 11.3.2R(2)</i> (Master-feeder agreement and internal conduct of business rules);</u>
	(e)	<u>how the <i>unitholders</i> may obtain further information on the <i>master UCITS</i> and the <i>master-feeder agreement</i>;</u>
	(f)	<u>a description of all remuneration or reimbursement of costs payable by the <i>feeder UCITS</i> by virtue of its investment in <i>units</i> of the <i>master UCITS</i>, as well as the aggregate charges of the <i>feeder UCITS</i> and the <i>master UCITS</i>; and</u>

	(g)	a description of the tax implications of the investment into the <i>master UCITS</i> for the <i>feeder UCITS</i> .
[Note: article 63(1) of the <i>UCITS Directive</i>]		
...		

...

Appointment of a new ACD or manager

- 4.3.6A R (1) In the case of a *UCITS scheme*, the appointment of a new *ACD* of an *ICVC* under *COLL 6.5.3R* (Appointment of an *ACD*) or the replacement of the *manager* of an *AUT* who proposes to retire under *COLL 6.5.8R* (Retirement of a manager of an *AUT*) must, if in either case the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be treated as a significant change in accordance with *COLL 4.3.6R*.
- (2) Paragraph (1) does not apply:
- (a) if the appointment of the new *authorised fund manager* is the subject of an *extraordinary resolution* approved by a meeting of *unitholders*; or
- (b) following the termination of the appointment of the *ACD* of an *ICVC* under *COLL 6.5.4R(2)* or (3) (Termination of appointment of an *ACD*), if the *directors* of the *ICVC* other than the *ACD*, or the *depository* if there are no such *directors*, consider that it would be in the best interests of *unitholders* to appoint a new *ACD* without delay.

Guidance on significant changes

- 4.3.7 G ...
- (4) The requirement in *COLL 4.3.6AR(1)* applies in all cases where the outgoing *authorised fund manager* (whether established in the *United Kingdom* or in another *EEA State*) is to be replaced by an *authorised fund manager* established in any other *EEA State* (including the *United Kingdom*).

...

Appointment of an AFM without prior written notice to unitholders

- 4.3.10 R (1) In the case of a *UCITS scheme*, the appointment of a new *authorised fund manager* as a result of:
- (a) in the case of an *ICVC*, the termination of the appointment of the previous *ACD* under *COLL 6.5.4R(2)* or (3) (Termination of

appointment of an ACD); or

- (b) in the case of an AUT, the replacement of the *manager* under COLL 6.5.7R(2) (Replacement of a manager);

must, if the new *authorised fund manager* is established in a different EEA State to the outgoing *authorised fund manager*, be notified to *unitholders*.

- (2) The new *authorised fund manager* must immediately notify *unitholders* of its appointment under (1) in an appropriate manner.

Change events relating to feeder UCITS

- 4.3.11 R Where the *authorised fund manager* of a UCITS scheme which is a *feeder UCITS* is notified of any change in respect of its *master UCITS* which has the effect of a change to the *feeder UCITS*, the *authorised fund manager* must:
- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* in accordance with the rules in this section; and
- (2) (a) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*;
- (b) for a significant change, give written notice to *unitholders* of that change; or
- (c) for a notifiable change, comply with COLL 4.3.8R.
- 4.3.12 R The actions required by COLL 4.3.11R(2) (a) and (b) must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder UCITS* has been informed of the relevant change to the *master UCITS*.
- 4.3.13 G (1) The *authorised fund manager* of the *feeder UCITS* should assess the change to the *master UCITS* in terms of its impact on the *feeder UCITS*. For example, a change to the investment objective and policy of the *master UCITS* that alters its risk profile would constitute a fundamental change for the *feeder UCITS*. In order for the *feeder UCITS* to continue investing in the *master UCITS*, the *authorised fund manager* of the *feeder UCITS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* in accordance with COLL 11.2.2R (Application for approval of an investment in a master UCITS).
- (2) Not all changes affecting the *master UCITS* will have the same significance for the *feeder UCITS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* are published might not be a significant change for the *feeder UCITS* if the *prices* of its own *units* continue to be published in the same way.

- (3) Where the *authorised fund manager* of the *feeder UCITS* receives insufficient notice of the intended change to the *master UCITS* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS*.

...

Contents of a short report

- 4.5.5 R (1) The short report for an *authorised fund*, or for a *scheme* which is an *umbrella*, its *sub-fund*, must contain for the relevant period:
- (a) (i) the name of the *scheme* or *sub-fund*;
 - (ii) its stated investment objectives and the policy and strategy pursued for achieving those objectives;
 - (iii) a brief assessment of its risk profile;
 - (iv) in the case of a *UCITS scheme*, the figure for the *synthetic risk and reward indicator* disclosed in its most up-to-date *key investor information document* and any subsequent changes to that figure during that period; and
 - (v) the name and address of the *authorised fund manager*;

...

- (1A) The short report of a *UCITS scheme* which is a *feeder UCITS* must also include:
- (a) a statement on the aggregate charges of the *feeder UCITS* and the *master UCITS*;
 - (b) a description of how the annual and half-yearly long reports of its *master UCITS* can be obtained; and
 - (c) where the *master UCITS* is a *UCITS scheme*, a description of how its annual and half-yearly short reports can be obtained.

[Note: article 63(2) of the *UCITS Directive*]

...

Significant information to be contained in the short report

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

significant information:

...

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

...

Contents of the annual long report

4.5.7 R ...

- (5) An annual long report of a UCITS scheme which is a feeder UCITS must also include:

(a) a statement on the aggregate charges of the feeder UCITS and the master UCITS; and

(b) a description of how the annual long report of its master UCITS can be obtained.

[Note: article 63(2) of the UCITS Directive]

Contents of the half-yearly long report

4.5.8 R

- (4) The half-yearly long report of a UCITS scheme which is a feeder UCITS must also include a description of how the half-yearly and annual reports of its master UCITS can be obtained.

[Note: article 63(2) second subparagraph of the UCITS Directive]

...

Authorised fund manager's report

4.5.9 R The matters set out in (1) to (13) must be included in any *authorised fund manager's* report, except where otherwise indicated:

...

- (9A) in the case of a UCITS scheme, the figure for the synthetic risk and reward indicator disclosed in its most recent key investor information document and any changes to that figure that have taken place during the period;

...

...

Publication and availability of annual and half-yearly long report

4.5.14 R ...

(2) The reports referred to in (1) must:

...

(d) be sent to the FSA and, if the UCITS scheme is managed by an EEA UCITS management company, to that company's Home State regulator on request.

[Note: article 74 of the UCITS Directive]

Provision of annual and half-yearly long reports for master and feeder UCITS

4.5.15 R (1) The authorised fund manager of a UCITS scheme which is a feeder UCITS must:

(a) where requested by an investor, provide copies of the annual and half-yearly long reports of its master UCITS free of charge; and

(b) file copies of the annual and half-yearly long reports of its master UCITS with the FSA.

(2) Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports of its master UCITS may be provided in a durable medium other than paper or by means of a website that meets the website conditions.

[Note: articles 63(3) and 63(5) of the UCITS Directive]

...

After COLL 4.6 insert the following new sections. The text is not underlined.

4.7 Key investor information and marketing communications

Application

4.7.1 R This section applies to an ICVC, an authorised fund manager of an AUT or ICVC and any other director of an ICVC where, in each case, the AUT or ICVC is a UCITS scheme.

Key investor information

4.7.2 R (1) An authorised fund manager must, for each UCITS scheme which it manages, draw up a short document in English containing key investor information (a "key investor information document") for investors.

- (2) The words “key investor information” must be clearly stated in this document.
- (3) *Key investor information* must include appropriate information about the essential characteristics of the *UCITS scheme* which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, therefore, to take investment decisions on an informed basis.
- (4) *Key investor information* must provide information on the following essential elements in respect of the *UCITS scheme*:
 - (a) identification of the scheme;
 - (b) a short description of its investment objectives and investment policy;
 - (c) past performance presentation or, where relevant, performance scenarios;
 - (d) costs and associated charges; and
 - (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the *scheme*.
- (5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.
- (6) A *key investor information document* must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the *prospectus* and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which that information is available to investors.
- (7) *Key investor information* must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.
- (8) *Key investor information* must be used without alterations or supplements, except translation, in each *EEA State* where a *UCITS marketing notification* has been made so as to enable the *marketing* of the *scheme’s units* in that State.

[**Note:** article 78 of the *UCITS Directive*]

Form and content of a key investor information document

- 4.7.3 G The *KII Regulation* sets out the form and content of a *key investor information*

document. This Regulation is directly applicable in the *United Kingdom* and accordingly its articles (but not the preceding recitals) are binding on all *firms* to which it applies. Under the Regulation an *authorised fund manager* must ensure that each *key investor information document* it produces for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in *COLL* Appendix 1EU (The KII Regulation).

Translation of a key investor information document

- 4.7.4 G While the original *key investor information document* is required by *COLL* 4.7.2R to be drawn up in English, an *authorised fund manager* may prepare an accurate translation of it into any language for the purpose of *marketing* the *units* of the *UCITS scheme* in the *United Kingdom*. Any such translation should be prepared without alterations or supplements.

Pre-contractual information

- 4.7.5 R The *key investor information document* must:
- (1) constitute pre-contractual information (see *COBS* 14.2.1AR (Provision of key investor information document));
 - (2) be fair, clear and not misleading; and
 - (3) be consistent with the relevant parts of the *prospectus*.

[**Note:** article 79(1) of the *UCITS Directive*]

- 4.7.6 G
- (1) Section 90ZA of the *Act* (Liability for key investor information) provides that a *person* will not incur civil liability solely on the basis of the *key investor information document*, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus*.
 - (2) Article 20 of the *KII Regulation* prescribes the wording of a warning to investors that must be included in the “practical information” section of the *key investor information document*. It states that an *authorised fund manager* may be held liable solely on the basis of any statement contained in the document that is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus* for the *UCITS scheme*.

Revision and filing of key investor information

- 4.7.7 R
- (1) An *authorised fund manager* must keep up to date the essential elements of the *key investor information document* for each *UCITS scheme* which it manages.
 - (2) An *authorised fund manager* must file the *key investor information document* for each *UCITS scheme* which it manages, and any amendments thereto, with the *FSA*.

- (3) An *authorised fund manager* of a *feeder UCITS* must, in addition to (1) and (2), file the *key investor information* of its *master UCITS*, and any amendments thereto, with the *FSA*.

[**Note:** articles 63(3) and 82 of the *UCITS Directive*]

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

- 4.7.8 G (1) *Authorised fund managers* are advised that CESR issued two separate guidelines regarding the methodology that should be used in calculating the *synthetic risk and reward indicator* and the ongoing charges figure, both of which must be disclosed in the *key investor information document* for each *UCITS scheme* which they manage.
- (2) In line with the *KII Regulation*, *firms* in producing their *key investor information documents* should take account of CESR's methodologies in calculating the figures for the *synthetic risk and reward indicators* and for ongoing charges to be disclosed in those documents. For ease of reference links to these guidelines are shown below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII (CESR/10-673)

http://www.esma.europa.eu/index.php?page=document_details&id=6961&from_id=28

Methodology for the calculation of the ongoing charges figure in the KII (CESR/10-674)

http://www.esma.europa.eu/index.php?page=document_details&id=6962&from_id=28

- (3) *Firms* should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority's powers to develop implementing technical standards in this area.

- 4.7.9 G *Authorised fund managers* are further advised that CESR issued guidelines in relation to several other matters concerning *key investor information*. These are:

Guidelines – Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318)

http://www.esma.europa.eu/index.php?page=document_details&id=7333&from_id=28

Guidelines – Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319)

http://www.esma.europa.eu/index.php?page=document_details&id=7334&from_id=28

CESR's guide to clear language and layout for the Key Investor Information document (CESR/10-1320)

http://www.esma.europa.eu/index.php?page=document_details&id=7335&from_id=28

CESR's template for the Key Investor Information document (CESR/10-1321)

http://www.esma.europa.eu/index.php?page=document_details&id=7336&from_id=28

CESR's guidelines on a common definition of European money market funds, which refer to matters that should be included in the *key investor information for money market funds* and *short-term money market funds* (CESR/10 – 049)

http://www.esma.europa.eu/index.php?page=document_details&id=6638&from_id=28

Marketing communications

- 4.7.10 G *COBS* 4.13.2R(1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) require an *authorised fund manager* to ensure that its marketing communications that contain an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme*, indicate that a *prospectus* and *key investor information* exist, specifying where they may be obtained by the public or how the public may have access to them.

4.8 Notifications for UCITS master-feeder arrangements

Application

- 4.8.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT* or *ICVC* is a *UCITS scheme*.

Purpose

- 4.8.2 G The purpose of this section is to explain the type, form and timing of the notifications that are required before an existing *UCITS scheme* can begin to operate as a *feeder UCITS* for the first time, or an existing *feeder UCITS* can change to a different *master UCITS*. The process for making those changes is set out in *COLL* 11.2 (Approval of a feeder UCITS).

Information to be provided to unitholders

- 4.8.3 R (1) An *authorised fund manager* of a *UCITS scheme* that has been approved by the *FSA* to operate as a *feeder UCITS*, including as a *feeder UCITS* of a different *master UCITS*, must provide the following information to its *unitholders* at least 30 calendar days before the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has

already invested in them, the date when its investment will exceed the limit applicable under *COLL 5.2.11R(9)* (Spread: general):

- (a) a statement that the *FSA* has approved the investment of the *feeder UCITS* in *units* of that *master UCITS*;
 - (b) the *key investor information* of the *feeder UCITS* and the *master UCITS*;
 - (c) the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has already invested in them, the date when its investment will exceed the limit applicable under *COLL 5.2.11R(9)*;
 - (d) a statement that the *unitholders* have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or *redemption* of their *units* without any charges other than those retained by the *UCITS scheme* to cover disinvestment costs.
- (2) Where a *UCITS marketing notification* has been made in relation to a *feeder UCITS*, the *authorised fund manager* of the *feeder UCITS* must ensure that an accurate translation of the information in (1) is provided to *unitholders* in:
- (a) the official language, or one of the official languages, of the *feeder UCITS' Host State*; or
 - (b) a language approved by the *Host State regulator*.

[**Note:** article 64 first and second paragraphs of the *UCITS Directive*]

Method of providing information

- 4.8.4 R The *authorised fund manager* of the *feeder UCITS* must provide to *unitholders* the information required under *COLL 4.8.3R* in a *durable medium*.

[**Note:** article 29 of the *UCITS implementing Directive No 2*]

Amend the following as shown.

Application

- 5.1.1 R (1) Subject to 1(A), *COLL 5.1* to *COLL 5.5* apply to the *authorised fund manager* and the *depository* of an *authorised fund*, and to an *ICVC*, which is or ever has been a *UCITS scheme*.
- (1A) The only sections of *COLL 5* that apply to the *authorised fund manager* and the *depository* of a *feeder UCITS*, and to an *ICVC* which is a *feeder UCITS*, are *COLL 5.3* and *COLL 5.8*, although particular

rules in COLL 5.1, COLL 5.2 and COLL 5.5 are incorporated by reference.

...

...

Application

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

(2) COLL 5.2.23CR (Valuation of OTC derivatives) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

5.2.2 R This table belongs to COLL 5.2.1R

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Manager of an AUT</i>	<i>Depository of an ICVC</i>	<i>Trustee of an AUT</i>
...					
<u>5.2.22AG</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>X</u>
...					
<u>5.2.23CR</u>		<u>x</u>	<u>x</u>		
<u>5.2.24R</u>		* 	* 		
<u>5.2.25G</u>		* 	* 	* 	X
...					
<u>5.2.34G</u>		<u>x</u>	<u>x</u>		

...

UCITS schemes: permitted types of scheme property

5.2.6A R The *scheme property* of a *UCITS scheme* must, except where otherwise provided in the *rules* in this chapter, consist solely of any or all of:

...

(6) (for an *ICVC*) moveable and immovable property that is ~~necessary~~ essential for the direct pursuit of the *ICVC*'s business;

...

[**Note:** articles ~~19(1)~~ 50(1) (in conjunction with other *rules* in this section) and ~~(2)(e)~~ 50(3) of the *UCITS Directive*]

...

5.2.7F R ...

[**Note:** article ~~1(9)~~ 2(1)(o) of the *UCITS Directive*]

...

5.2.8 R ...

[**Note:** article ~~19~~ 50(1)(a)-(d) and (h) and ~~2~~ (2)(a) of the *UCITS Directive* and article 3(1) of the *UCITS eligible assets Directive*]

...

5.2.9 G (1) This section specifies criteria based on those in article ~~19~~ 50 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.

...

5.2.10 R (1) ...
A

[**Note:** article ~~19~~ 50(1)(h), ~~first to third indents (i) to (iii)~~ of the *UCITS Directive*]

...

...

5.2.10E G ...

[**Note:** article ~~19~~ 50(1)(h)(iv), ~~fourth indent~~ of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

...

Spread: general

5.2.11 R ...

(11) ~~For the purpose of calculating the limits in (7) and (10), the exposure in respect of any *OTC derivative* may be reduced to the extent that~~

~~collateral is held in respect of it if the collateral meets each of the conditions specified in (12). [deleted]~~

- (12) ~~The conditions referred to in (11) are that the collateral:~~
- ~~(a) is marked to market on a daily basis and exceeds the value of the amount at risk;~~
 - ~~(b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;~~
 - ~~(c) is held by a third party custodian not related to the provider or legally secured from the consequences of a failure of a related party; and~~
 - ~~(d) can be fully enforced by the UCITS scheme at any time. [deleted]~~
- (13) ~~For the purpose of calculating the limits in (7) and (10), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:-~~
- ~~(a) comply with the conditions set out in Section 3 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the Banking Consolidation Directive; and~~
 - ~~(b) are based on legally binding agreements. [deleted]~~
- (14) ~~In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:~~
- ~~(a) it is backed by an appropriate performance guarantee; and~~
 - ~~(b) it is characterised by a daily mark to market valuation of the derivative positions and an at least daily margining. [deleted]~~

[Note: article ~~22~~ 52 of the UCITS Directive]

Guidance on spread: general

- 5.2.11A G (1) ~~COLL 5.2.11R(11) to (14) reflect the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this Section referred to as “the Commission Recommendation on the use of financial derivative instruments”). This Recommendation may be accessed via www.europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_199/l_19920040607en00240029.pdf. [deleted]~~
- (2) ~~The attention of authorised fund managers is specifically drawn to condition (d) in COLL 5.2.11R(12) under which the collateral has to be~~

~~legally enforceable at any time. It is the FSA's view that it is advisable for an authorised fund manager to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. Depositaries will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COLL 6.6.4R (General duties of the depositary). [deleted]~~

(3) In applying the spread ...

...

Counterparty risk and issuer concentration

- 5.2.11B R (1) An authorised fund manager of a UCITS scheme must ensure that counterparty risk arising from an OTC derivative transaction is subject to the limits set out in COLL 5.2.11R(7) and (10).
- (2) When calculating the exposure of a UCITS scheme to a counterparty in accordance with the limits in COLL 5.2.11R(7), the authorised fund manager must use the positive mark-to-market value of the OTC derivative contract with that counterparty.
- (3) An authorised fund manager may net the OTC derivative positions of a UCITS scheme with the same counterparty, provided:
- (a) it is able legally to enforce netting agreements with the counterparty on behalf of the UCITS scheme; and
 - (b) the netting agreements in (a) do not apply to any other exposures the UCITS scheme may have with that same counterparty.
- (4) An authorised fund manager of a UCITS scheme may reduce the exposure of the scheme property to a counterparty to an OTC derivative transaction through the receipt of collateral. Collateral received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.
- (5) An authorised fund manager of a UCITS scheme must take collateral into account in calculating exposure to counterparty risk in accordance with the limits in COLL 5.2.11R(7) when it passes collateral to the counterparty to an OTC derivative transaction on behalf of the UCITS scheme.
- (6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the authorised fund manager is able legally to enforce netting arrangements with this counterparty on behalf of the UCITS scheme.

- (7) An authorised fund manager of a UCITS scheme must calculate the issuer concentration limits referred to in COLL 5.2.11R on the basis of the underlying exposure created through the use of OTC derivatives in accordance with the commitment approach.
- (8) In relation to exposures arising from OTC derivative transactions, as referred to in COLL 5.2.11R(10), the authorised fund manager must include in the calculation any counterparty risk relating to the OTC derivative transactions.

[Note: article 43 of the UCITS implementing Directive]

...

Investment in collective investment schemes

5.2.13 R A UCITS scheme must not invest in units in a collective investment scheme (“second scheme”) unless the second scheme satisfies all of the following conditions, and provided that no more than 30% of the value of the UCITS scheme is invested in second schemes within (1)(b) to (e):

(1) the second scheme must:

...

(c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met); or

(d) be authorised in another *EEA State* (provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met); or

...

(provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met);

...

Qualifying non-UCITS collective investment schemes

5.2.14 G ...

(2) Article ~~49~~ 50 of the *UCITS Directive* sets out the general investment limits. So, a *non-UCITS retail scheme*, or its equivalent *EEA scheme* which has the power to invest in gold or immovables would not meet the criteria set in COLL 5.2.13R(1)(c) and COLL 5.2.13R(1)(d).

(3) In determining whether a scheme meets the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* for the purposes of COLL 5.2.13R(1)(d) or COLL 5.2.13R(1)(e), the *authorised fund manager* should consider the following factors before deciding that the scheme

provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:

...

[**Note:** article 26 of *CESR's UCITS eligible assets guidelines* with respect to article ~~49~~ 50(1)(e) of the *UCITS Directive*]

- (4) The requirement for supervisory equivalence, as described in article ~~49~~ 50(1)(e) (first indent) of the *UCITS Directive*, also applies to *schemes* (that are not *UCITS schemes*) established in other *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

...

Derivatives: general

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

- (a) ...
- (b) the transaction is covered, as required by ~~COLL 5.3.3R (Cover for transaction in derivatives and forward transactions)~~ 5.3.3AR (Cover for investment in derivatives and forward transactions).

...

...

Guidance on financial indices underlying derivatives

5.2.20B G (1) ...

(2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *UCITS scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in ~~COLL 5.3.3R~~ 5.3.3AR and spread set out in *COLL 5.2.11R*.

...

Requirement to cover sales

5.2.22 R ...

- (3) ~~Paragraph (1) does not apply where:~~
- (a) ~~the risks of the underlying financial instrument of a derivative~~

can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or

- (b) ~~the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:~~
- (i) ~~cash;~~
 - (ii) ~~liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or~~
 - (iii) ~~other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant). [deleted]~~
- (4) ~~In the asset classes referred to in (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market. [deleted]~~

Guidance on requirement to cover sales

5.2.22A G ~~COLL 5.2.22R(3) to (4) reflect the provisions of Article 7 of the Commission Recommendation on the use of financial derivative instruments. [deleted]~~

- (1) In the FSA's view the requirement in COLL 5.2.22R(1)(a) can be met where:
- (a) the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
 - (b) the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:
 - (i) cash;
 - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
 - (iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

- (2) In the asset classes referred to in (1), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven *business days* at a price closely corresponding to the current valuation of the financial instrument on its own market.

...

Valuation of OTC derivatives

- 5.2.23C R (1) For the purposes of COLL 5.2.23R(2), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:
- (a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a UCITS scheme or an EEA UCITS scheme to OTC derivatives; and
 - (b) ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.
- (2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the authorised fund manager or UK UCITS management company must comply with the requirements in SYSC 8.1.13R (Additional requirements for a management company) and COLL 6.6A.4R(5) and (6) (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) or, where appropriate, the equivalent requirements of the UCITS Home State regulator implementing article 5(2) and article 23(4), second subparagraph, of the UCITS implementing Directive.
- (3) The arrangements and procedures referred to in this rule must be:
- (a) adequate and proportionate to the nature and complexity of the OTC derivative concerned; and
 - (b) adequately documented.

[Note: article 51(1) second paragraph of the UCITS Directive and articles 44(2) and 44(4) of the UCITS implementing Directive]

Risk management

- 5.2.24 R (1) An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme's positions and their contribution to the overall risk profile of the scheme. [deleted]
- (2) The following details of the risk management process must be notified by the authorised fund manager to the FSA in advance of the use of the process as required by (1):

- (a) the methods for estimating risks in *derivative* and forward transactions; and
 - (b) the types of *derivatives* and forwards to be used within the *scheme* together with their underlying risks and any relevant quantitative limits. [deleted]
- (3) The *authorised fund manager* must notify the *FSA* in advance of any material alteration to the details in (2)(a) or (b). [deleted]

Risk management process

- 5.2.25 G
- (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*. [deleted]
 - (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL 6.6.4R* (General duties of the depository) and *COLL 6.6.14R* (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate. [deleted]
 - (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic on non-linear dependence in the value of a position to its underlying. [deleted]
 - (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC 4.1* (General requirements). [deleted]
 - (5) The risk management process should enable the analysis required by *COLL 5.2.24R* to be undertaken at least daily or at each valuation point whichever is the more frequent. [deleted]
 - (6) *Firms* carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to measure market risk) of the Commission Recommendation on the use of financial derivative instruments. [deleted]
 - (7) In assessing the risk of *OTC derivatives*, *firms* should note the methodologies set out in Article 5.3 (Invitation to use standards laid down in Directive 2000/12/EC as a first reference) of the Commission Recommendation on the use of financial *derivative* instruments. [deleted]
 - (8) An *authorised fund manager* should undertake the risk assessment with the highest care when the counterparty to the *derivative* is an *associate* of the *authorised fund manager* or the credit issuer. [deleted]

~~[Note: CESR's UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive.]~~

...

Disclosure requirements in relation to UCITS schemes or EEA UCITS schemes that employ particular investment strategies

- 5.2.34 G Authorised fund managers of UCITS schemes or EEA UCITS schemes should bear in mind that where a UCITS scheme, or an EEA UCITS scheme that is a recognised scheme under section 264 of the Act, employs particular investment strategies such as investing more than 35% of its scheme property in government and public securities, or investing principally in units in collective investment schemes, deposits or derivatives, or replicating an index, COBS 4.13.2R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

...

Introduction

- 5.3.2 G (1) ...
- (2) ... ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ This section sets out detailed requirements for cover of a scheme.

...

~~Cover for transactions in derivatives and forward transactions~~

- 5.3.3 R (1) ~~A transaction in derivatives or forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2). [deleted]~~
- (2) ~~Exposure is covered globally if adequate cover from within the scheme property is available to meet the scheme's total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions. [deleted]~~
- (3) ~~Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of (2). [deleted]~~
- (4) ~~Property the subject of a transaction under COLL 5.4 (Stock lending) is only available for cover if the authorised fund manager has taken~~

~~reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required. [deleted]~~

- (5) ~~The global exposure relating to derivatives held in a UCITS scheme may not exceed the net value of the scheme property (Article 2(1) of the Commission Recommendation 2004/383/EC). [deleted]~~

Cover for investment in derivatives and forward transactions

- 5.3.3A R The authorised fund manager of a UCITS scheme must ensure that its global exposure relating to derivatives and forward transactions held in the UCITS scheme does not exceed the net value of the scheme property.

[Note: article 51(3) first paragraph of the UCITS Directive]

Daily calculation of global exposure

- 5.3.3B R An authorised fund manager of a UCITS scheme must calculate its global exposure on at least a daily basis.

[Note: article 41(2) of the UCITS implementing Directive]

- 5.3.3C R For the purposes of this section, exposure must be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

[Note: article 51(3) second paragraph of the UCITS Directive]

Guidance on cover

- 5.3.4 G (1) ~~An authorised fund manager should note that the scope of COLL 5.3.3R COLL 5.3.3CR is extended in relation to underwriting commitments by COLL 5.5.8R(4) (General power to accept or underwrite placings).~~
- (2) Property the subject of a transaction under COLL 5.4 (Stock lending) should not be considered as available for cover unless the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

...

Continuing nature of limits and requirements

- 5.3.6 R (1) ~~An authorised fund manager must, (as frequently as necessary), recalculate the amount of cover required in respect of derivatives and forward positions already in existence under this section. [deleted]~~
- (2) ~~Derivatives and rights under forward transaction may be retained in the scheme property only so long as they remain covered globally under~~

~~COLL 5.3.3R~~. [deleted]

Calculation of global exposure

5.3.7 R An authorised fund manager must calculate the global exposure of any UCITS scheme it manages either as:

- (1) the incremental exposure and leverage generated through the use of derivatives and forward transactions (including embedded derivatives as referred to in COLL 5.2.19R(3A) (Derivatives: general)), which may not exceed 100% of the net value of the scheme property; or
- (2) the market risk of the scheme property.

[Note: article 41(1) of the UCITS implementing Directive]

5.3.8 R (1) An authorised fund manager must calculate the global exposure of a UCITS scheme by using:

- (a) the commitment approach; or
 - (b) the value at risk approach.
- (2) An authorised fund manager must ensure that the method selected in (1) is appropriate, taking into account:
- (a) the investment strategy pursued by the UCITS scheme;
 - (b) the types and complexities of the derivatives and forward transactions used; and
 - (c) the proportion of the scheme property comprising derivatives and forward transactions.
- (3) Where a UCITS scheme employs techniques and instruments including repo contracts or stock lending transactions in accordance with COLL 5.4 (Stock lending) in order to generate additional leverage or exposure to market risk, the authorised fund manager must take those transactions into consideration when calculating global exposure.
- (4) For the purposes of (1), value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.

[Note: articles 41(3) and 41(4) of the UCITS implementing Directive]

Commitment approach

5.3.9 R Where an authorised fund manager of a UCITS scheme uses the commitment approach for the calculation of global exposure, it must:

- (1) ensure that it applies this approach to all derivative and forward transactions (including embedded derivatives as referred to in COLL

5.2.19R(3A) (Derivatives: general)), whether used as part of the *scheme's* general investment policy, for the purposes of risk reduction or for the purposes of *efficient portfolio management* in accordance with the *rules* of this chapter; and

- (2) convert each *derivative* or forward transaction into the market value of an equivalent position in the underlying asset of that *derivative* or forward (standard commitment approach).

[**Note:** articles 42(1) and 42(2) first paragraph of the *UCITS implementing Directive*]

5.3.10 R

- (1) An *authorised fund manager* of a *UCITS scheme* may apply other calculation methods which are equivalent to the standard commitment approach.
- (2) An *authorised fund manager* may take account of netting and hedging arrangements when calculating global exposure of a *UCITS scheme*, where those arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.
- (3) Where the use of *derivatives* or forward transactions does not generate incremental exposure for the *UCITS scheme*, the underlying exposure need not be included in the commitment calculation.
- (4) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the *UCITS scheme* in accordance with *COLL 5.5.4R* (General power to borrow) need not form part of the global exposure calculation.

[**Note:** articles 42(2) final paragraph, 42(3), 42(4) and 42(5) of the *UCITS implementing Directive*]

CESR guidelines

- 5.3.11 G *Authorised fund managers* are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the *rules* in this section:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)

http://www.esma.europa.eu/index.php?page=document_details&id=7000&from_id=28

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA/2011/112)

http://www.esma.europa.eu/index.php?page=document_details&id=7542&fro

[m_id=28](#)

...

General power to accept or underwrite placings

5.5.8 R ...

- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:
- (a) covered under ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions); and

...

...

Derivatives: general

5.6.12 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *non-UCITS retail scheme* unless the transaction is:

- (a) of a kind specified in COLL 5.6.13R (Permitted transactions (derivatives and forwards)); and
- (b) covered, as required by ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions).

...

After COLL 5.7 insert the following new section. The text is not underlined.

5.8 ...

Application

5.8.1 R (1) This section applies to:

- (a) the *authorised fund manager* of a *feeder UCITS*;
- (b) the *depository* of a *feeder UCITS*; and
- (c) an *ICVC* which is a *feeder UCITS*;

where the *scheme* is a *UCITS scheme*.

- (2) Where this section refers to a *rule* or *guidance* in COLL 5.1 to COLL 5.5, those *rules* and *guidance*, and any *rules* and *guidance* to which they

refer, must be read as if a reference to a *UCITS scheme* were a reference to a *feeder UCITS*.

- (3) Where the *sub-fund* of a *UCITS scheme* is a *feeder UCITS*, the provisions in this section apply to each *sub-fund* as they would for an *authorised fund*.

Permitted types of scheme property

- 5.8.2 R A *feeder UCITS* must invest at least 85% in value of the *scheme property* in *units* of a single *master UCITS*.

[**Note:** article 58(1) of the *UCITS Directive*]

Balance of scheme property: investment restrictions on a feeder UCITS

- 5.8.3 R A *feeder UCITS* may hold up to 15% in value of the *scheme property* in one or more of the following:

- (1) cash or *near cash* in accordance with *COLL 5.5.3R* (Cash and near cash);
- (2) *derivatives* and forward transactions which may be used only for the purposes of hedging and in accordance with the *rules* set out at *COLL 5.8.7R* (Other provisions applicable to a feeder UCITS); and
- (3) (for an *ICVC*) movable and immovable property which is essential for the direct pursuit of the business.

[**Note:** article 58(2) first subparagraph of the *UCITS Directive*]

Exposure to derivatives

- 5.8.4 R In calculating the global exposure of a *feeder UCITS* to *derivatives* and forward transactions in accordance with *COLL 5.3.3AR* (Cover for investment in derivatives and forward transactions), the *feeder UCITS* must combine its own direct exposure under *COLL 5.8.3R(2)* with either:

- (1) the *master UCITS*' actual exposure to *derivatives* and forward transactions in proportion to the *feeder UCITS*' investment into the *master UCITS*; or
- (2) the *master UCITS*' potential maximum global exposure to *derivatives* and forward transactions provided for in the *master UCITS*' *instrument constituting the scheme* or its *prospectus* in proportion to the *feeder UCITS* investment into the *master UCITS*.

[**Note:** article 58(2) second subparagraph of the *UCITS Directive*]

Prudent spread of risk

- 5.8.5 R An *authorised fund manager* must ensure that, to the extent that the *feeder*

UCITS invests in assets other than *units* of a *master UCITS*, the *feeder UCITS* complies with *COLL 5.2.3R(1)* (Prudent spread of risk).

Investment powers: general

- 5.8.6 R The *scheme property* of a *feeder UCITS* must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the *instrument constituting the scheme* may restrict the investment and borrowing powers of a *scheme* further than the relevant restrictions in this section.

Other provisions applicable to a feeder UCITS

- 5.8.7 R The following *rules* and *guidance* in *COLL 5.1* (Introduction), *COLL 5.2* (General investment powers and limits for UCITS schemes) and *COLL 5.5* (Cash, borrowing, lending and other provisions) apply to the *authorised fund manager* of a *UCITS scheme* which is a *feeder UCITS* and to an *ICVC* which is a *feeder UCITS*:
- (1) *COLL 5.1.1R* (Application), *COLL 5.1.2G(1)* (Purpose) and *COLL 5.1.3R* (Treatment of obligations);
 - (2) *COLL 5.2.1R* (Application), *COLL 5.2.2R* (Table of application) and *COLL 5.2.2AG*;
 - (3) *COLL 5.2.5R* (Valuation) and *COLL 5.2.6G* (Valuation guidance);
 - (4) *COLL 5.2.10R* (Eligible markets: requirements);
 - (5) *COLL 5.2.11R(7)* (Spread: general);
 - (6) *COLL 5.2.11BR* (Counterparty risk and issuer concentration);
 - (7) *COLL 5.2.15R(1)* (Investment in associated collective investment schemes);
 - (8) *COLL 5.2.19R(1)*, (2) and (4) (Derivatives: general);
 - (9) *COLL 5.2.20R* (Permitted transactions (derivatives and forwards));
 - (10) *COLL 5.2.20AR* (Financial indices underlying derivatives), *COLL 5.2.20BG(1)* and *COLL 5.2.20BG(4)* (Guidance on financial indices underlying derivatives);
 - (11) *COLL 5.2.21R* (Transactions for the purchase of property);
 - (12) *COLL 5.2.22R* (Requirement to cover sales) and *COLL 5.2.22AG* (Guidance on requirement to cover sales);
 - (13) *COLL 5.2.23R* (OTC Transactions in derivatives), *COLL 5.2.23AR* and *COLL 5.2.23BR*;

- (14) *COLL 5.2.23CR* (Valuation of OTC derivatives);
- (15) *COLL 5.2.26R* (Investment in deposits);
- (16) *COLL 5.5.1R* to *COLL 5.5.7AG* (Cash, borrowing, lending and other provisions); and
- (17) *COLL 5.5.9R* (Guarantees and indemnities) and *COLL 5.5.10G* (Guidance on restricting payments).

Amend the following as shown.

Application

- 6.3.1 R (1) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.
- (2) *COLL 6.3.3AR* to *COLL 6.3.3DR* (Accounting procedures):
- (a) apply to:
- (i) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services; and
 - (ii) an EEA UCITS management company providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom;
- in addition to applying in accordance with (1); but
- (b) do not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

...

Accounting procedures

- 6.3.3A R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the employment of the accounting policies and procedures referred to in SYSC 4.1.9R (Accounting policies), so as to ensure the protection of unitholders.
- (2) Accounting for the scheme shall be carried out in such a way that all assets and liabilities of the scheme can be directly identified at all times.

- (3) If the scheme is an umbrella, separate accounts must be maintained for each sub-fund.

[Note: article 8(1) of the UCITS implementing Directive]

- 6.3.3B R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS Home State, so as to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8(2) of the UCITS implementing Directive]

- 6.3.3C G (1) The accounting policies and procedures referred to in COLL 6.3.3BR should enable the authorised fund manager of a UCITS scheme to value the scheme property accurately at each valuation point and to calculate dealing prices by reference to that valuation.
- (2) Where different share or unit classes exist, it should be possible to extract from the accounting records the net asset value of each different class.

[Note: recital (9) of the UCITS implementing Directive]

- 6.3.3D R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages.

[Note: article 8(3) of the UCITS implementing Directive]

...

Table of application

- 6.6.2 R This table belongs to COLL 6.6.1R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
...						
6.6.15R	x	x	x	x	✗	x
<u>6.6.15AR</u>		<u>x</u>			<u>x</u>	

*						
...						
Note	(1)	“x” means “applies”, but not every paragraph in every <i>rule</i> will necessarily apply.				
Notes:	(2)	* <u>COLL 6.6.15AR</u> has a special application as set out in <u>COLL 6.6.15AR(1)</u> .				

...

General duties of the depositary

6.6.4 R ...

- (5) The depositary of a UCITS scheme must ensure that in transactions involving the scheme property of a UCITS scheme, any consideration is remitted for the account of the scheme within the usual time limits.
- (6) Where the UCITS scheme is being managed by an EEA UCITS management company, the depositary must enter into a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform its functions in accordance with COLL 6.6.5R.
- (7) The agreement in (6):
- (a) may cover more than one UCITS scheme; and
- (b) must as a minimum contain the information set out in COLL 6 Annex 1R.

[Note: articles 22(3)(a), (d) and (e), 23(5), 32(3) and 33(5) of the UCITS Directive and article 36 first sentence of the UCITS implementing Directive]

6.6.4A G The requirements of SUP 2 (Information gathering by the FSA on its own initiative) apply to the depositary of a UCITS scheme, under which it must enable the FSA to obtain, on request, all information that the depositary has obtained while discharging its duties and that is necessary for the FSA to supervise the scheme’s compliance with the requirements referred to in COLL 6.6.4R(6).

[Note: articles 23(4) and 33(4) of the UCITS Directive]

...

Committees and delegation

6.6.15 R (1) ...

(1A) The directors of an ICVC have the power to retain the services of

anyone to assist in the performance of their functions, subject to the duty of the ACD to comply with COLL 6.6.15AR.

- (2) ~~The authorised fund manager of a scheme and the directors of an ICVC have the power to retain the services of anyone in the performance of their respective functions, provided that:~~
- (a) ~~a mandate in relation to managing investments of the scheme property is not given to:~~
 - (i) ~~the depositary; or~~
 - (ii) ~~any other person whose interests may conflict with those of the authorised fund manager or unitholders; or~~
 - (iii) ~~an authorised person operating from an establishment in the United Kingdom unless such person has a Part IV permission to manage investments; or~~
 - (iv) ~~any other person operating from an establishment in a country other than the United Kingdom unless such person:~~
 - (A) ~~is authorised or registered in such country for the purpose of asset management; and~~
 - (B) ~~is subject to prudential supervision in such country;~~

~~and in addition if that person is not an EEA firm, co-operation is ensured between the FSA and the overseas regulator of that person;~~
 - (b) ~~the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;~~
 - (c) ~~the mandate permits the authorised fund manager to:~~
 - (i) ~~give further instructions to the person so retained; and~~
 - (ii) ~~withdraw the mandate with immediate effect when this is in the interests of the unitholders; and~~
 - (d) ~~the mandate does not prevent effective supervision of the authorised fund manager and it must not prevent the authorised fund manager from acting, or the scheme from being managed in the best interests of the unitholders. [deleted]~~
- (3) ~~Subject to the provisions of the OEIC Regulations and to (1), where services are retained under (2), the responsibility which the authorised fund manager had in respect of such services prior to that retention of~~

~~services will remain unaffected. [deleted]~~

...

- (6) Where *COLL* 6.5.5R(4) (Other directors) applies, the *directors* have, in respect of the functions of the *ACD* under *COLL* 6.6.3R (Functions of the authorised fund manager), the same rights and responsibilities as for an *ACD* under this *rule* and *COLL* 6.6.15AR.

6.6.15A R (1) This rule applies to:

- (a) an authorised fund manager (other than an EEA UCITS management company) of an AUT or an ICVC where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme; and
- (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:

- (a) a mandate in relation to managing investments of the scheme is not given to:
- (i) the depositary; or
- (ii) any other person whose interests may conflict with those of the authorised fund manager or unitholders; or
- (iii) an authorised person operating from an establishment in the United Kingdom unless such person has a Part IV permission to manage investments; or
- (iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:
- (A) is authorised or registered in such country for the purpose of asset management; and
- (B) is subject to prudential supervision in such country;
- and in addition if that person is not an EEA firm, co-operation is ensured between the FSA and the overseas regulator of that person;

(b) the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so

retained;

- (c) the mandate permits the *authorised fund manager* to:
- (i) give further instructions to the *person* so retained; and
- (ii) withdraw the mandate with immediate effect when this is in the interests of the *unitholders*;
- (d) the mandate does not prevent effective supervision of the *authorised fund manager* and it must not prevent the *authorised fund manager* from acting, or the *scheme* from being managed, in the best interests of the *unitholders*; and
- (e) having regard to the nature of the functions to be carried out under the mandate, the *person* to whom the mandate is given must be qualified and capable of undertaking those functions.
- (3) Subject to the provisions of the *OEIC Regulations* and *COLL* 6.6.15R(1) and (1A), where services are retained under (2), the responsibility which the *authorised fund manager* had in respect of such services prior to that retention of services will remain unaffected.

[Note: article 13 of the *UCITS Directive*]

...

- 6.6.16 G (1) ...
- (2) *SUP* 15.8.6R (Delegation by UCITS management companies) requires ~~an~~ the *authorised fund manager* of a *UCITS* scheme to inform the *FSA* where before it delegates one of its duties is delegated to another *person*.
- (3) For the purpose of *COLL* 6.6.15AR(2)(a)(iv), adequate co-operation will be ensured where the *FSA* has entered into a co-operation agreement of the kind referred to in article ~~50(4)~~ 102(3) of the *UCITS Directive* with the relevant *overseas regulator*.

...

After *COLL* 6.6 insert the following new section. The text is not underlined.

6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

- 6.6A.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS* scheme, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS*

scheme; and

- (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.
- (2) *COLL 6.6A.6R* ((Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).
- (3) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders

6.6A.2 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must:

- (1) ensure that the *unitholders* of any such *scheme* it manages are treated fairly;
- (2) refrain from placing the interests of any group of *unitholders* above the interests of any other group of *unitholders*;
- (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- (4) (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each *scheme* it manages, in order to comply with the duty to act in the best interests of the *unitholders*; and
 - (b) be able to demonstrate that the investment portfolio of each such *scheme* it manages is accurately valued; and
- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*.

[**Note:** article 22 of the *UCITS implementing Directive*]

- 6.6A.3 G (1) Examples of malpractices for the purposes of *COLL 6.6A.2R(3)* would include market timing and late trading, which may have detrimental effects on *unitholders* and may undermine the functioning of the market.
- (2) Examples of undue costs for the purposes of *COLL 6.6A.2R(5)* would include unreasonable charges and excessive trading, taking into

account the *scheme's* investment objectives and policy.

[**Note:** recital (18) of the *UCITS implementing Directive*]

Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes

- 6.6A.4 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must:
- (1) ensure a high level of diligence in the selection and ongoing monitoring of *scheme property*, in the best interests of the *scheme* and the integrity of the market;
 - (2) ensure it has adequate knowledge and understanding of the assets in which any *scheme* it manages is invested;
 - (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;
 - (4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:
 - (a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the *scheme* before carrying out the investment; and
 - (b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;
 - (5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
 - (6) before entering into any arrangements of the type referred to in (5):
 - (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
 - (b) establish methods for the on-going assessment of the standard of performance of the third party.

[**Note:** article 23 of the *UCITS implementing Directive*]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 R The *authorised fund manager* of a *UCITS scheme* or the *UK UCITS management company* of an *EEA UCITS scheme* must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[**Note:** article 14(1)(e) of the *UCITS Directive*]

Strategies for the exercise of voting rights

- 6.6A.6 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, or the instruments held by an *EEA UCITS scheme*, are to be exercised, to the exclusive benefit of the *scheme* concerned.
- (2) The strategy referred to in (1) must determine measures and procedures for:
- (a) monitoring relevant corporate events;
 - (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant *scheme*; and
 - (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.
- (3) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must make available to *unitholders*:
- (a) a summary description of the strategies referred to in (1); and
 - (b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[**Note:** article 21 of the *UCITS implementing Directive*]

Amend the following as shown.

Charges on buying and selling units

- 6.7.7 R ...
- (3) This rule is subject to *COLL 6.3.7R* (SDRT provision), ~~and~~ *COLL 6.3.8R* (Dilution) and *COLL 11.3.11R* (Obligations of the master UCITS).

...

Prohibition on promotional payments

- 6.7.12 R (1) ...
- (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *simplified prospectus*, *key investor information document*, *key features document* or *key features illustration*, provided the *prospectus* states, in accordance with COLL 4.2.5R(13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

...

Income allocation and distribution

- 6.8.2B R The allocation or distribution of the income of a *UCITS scheme* must be determined in accordance with its *instrument constituting the scheme*, its *prospectus* and the general law of the *United Kingdom*.

[Note: article 86 of the *UCITS Directive*]

~~Income allocation and distribution~~

- 6.8.3 R (1) ...

...

- 6.9.10 G (1) ...
- (2) The restrictions of business imposed by COLL 6.9.9R reflect the position under Article ~~5~~ 6 of the *UCITS Directive*. In accordance with recital ~~(7)~~ (12) of the ~~amending UCITS Management Directive (2001/107/EC)~~ the activities referred to at COLL 6.9.9R(3)(a) to COLL 6.9.9R(3)(c) may be performed on behalf of *EEA UCITS management companies*.

...

After COLL 6.9 insert the following new sections. The text is not underlined.

6.10 Senior personnel responsibilities

Application

- 6.10.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
- (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross*

border services.

- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

Senior personnel responsibilities

- 6.10.2 R In complying with SYSC 4.3.1R (Responsibility of senior personnel), an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel*:
- (1) are responsible for the implementation of the general investment policy for each *scheme* it manages, as defined, where relevant, in the *prospectus* or the *instrument constituting the scheme*;
 - (2) oversee the approval of investment strategies for each *scheme* it manages;
 - (3) are responsible for ensuring that the *authorised fund manager* or *UK UCITS management company* has a permanent and effective compliance function as referred to in SYSC 6.1 (Compliance), even if this function is performed by a third party;
 - (4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the *risk limit system* of each *scheme* it manages are properly and effectively implemented and complied with, even if the risk management function is performed by a third party;
 - (5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each *scheme* it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and
 - (6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in COLL 6.12.5R (Risk management policy), including the *risk limit system* for each *scheme* it manages.

[**Note:** article 9(2) of the *UCITS implementing Directive*]

- 6.10.3 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel* receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R(2) to (5).

[**Note:** article 9(5) of the *UCITS implementing Directive*]

6.11 Risk control and internal reporting

Application

- 6.11.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

Permanent risk management function

- 6.11.2 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish and maintain a permanent risk management function.
- (2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the *authorised fund manager's* or *UK UCITS management company's* business and of each *scheme* it manages.
- (3) The *authorised fund manager* or *UK UCITS management company* must be able to demonstrate that:
- (a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and
 - (b) its risk management process satisfies the requirements of *COLL 6.12.3R* (Risk management process) or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*.

[**Note:** articles 12(1) and 12(2) of the *UCITS implementing Directive*]

- 6.11.3 G Where the risk management function required under *COLL 6.11.2R(1)* is not hierarchically and functionally independent, the *authorised fund manager* or *UK UCITS management company* should nevertheless be able to demonstrate that its risk management process satisfies the requirements of *COLL 6.12.3R* (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[**Note:** article 12(2) third paragraph and recital (12) of the *UCITS*

implementing Directive]

Duties of the permanent risk management function

- 6.11.4 R (1) The permanent risk management function must:
- (a) implement the risk management policy and procedures;
 - (b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as required by *COLL 5.2* (General investment powers and limits for UCITS schemes) and *COLL 5.3* (Derivative exposure) or, where appropriate, the relevant *UCITS Home State* measures implementing articles 41, 42 and 43 of the *UCITS implementing Directive*;
 - (c) provide advice to the *governing body*, as regards the identification of the risk profile of each *scheme* it manages;
 - (d) provide regular reports to the *governing body* and, where it exists, the *supervisory function* on:
 - (i) the consistency between the current level of risk incurred by each *scheme* it manages and the risk profile agreed for that *scheme*;
 - (ii) the compliance of each *scheme* it manages with the *risk limit system* referred to in (b); and
 - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
 - (e) provide regular reports to the *senior personnel* outlining the current level of risk incurred by the relevant *scheme* and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and
 - (f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in *COLL 5.2.23R* (OTC transactions in derivatives), *COLL 5.2.23CR* (Valuation of OTC derivatives) and in this *rule* or, where appropriate, the relevant *UCITS Home State* measures implementing article 44 of the *UCITS implementing Directive*.
- (2) The permanent risk management function must have the authority and access to all relevant information necessary to fulfil the duties set out in (1).

[**Note:** articles 12(3), 12(4) and 44(3) of the *UCITS implementing Directive*]

6.12 Risk management policy and risk measurement

Application

6.12.1 R This section applies to:

- (1) an *authorised fund manager* and a *depository* of a *UCITS scheme*; and
- (2) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.

6.12.2 G In the *FSA's* view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the *management company's Home State regulator* but to the extent that they constitute *fund application rules*, are also the responsibility of the *UCITS' Home State regulator*. As such, these responsibilities may overlap between the *competent authorities* of the *Home* and *Host States*. *EEA UCITS management companies* providing *collective portfolio management services* for a *UCITS scheme*, whether from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, are therefore advised that they will be expected to comply with the requirements of this section, except for *COLL 6.12.3R(2)* which, as a notification requirement, is a matter reserved for the rules of the *management company's Home State*.

Risk management process

- 6.12.3 R
- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.
 - (2) An *authorised fund manager* (excluding the *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme* must regularly notify the following details of the risk management process to the *FSA* and at least on an annual basis:
 - (a) a true and fair view of the types of *derivatives* and forward transactions to be used within the *scheme* together with their underlying risks and any relevant quantitative limits; and
 - (b) the methods for estimating risks in *derivative* and forward transactions.

[**Note:** article 51(1), first and third paragraphs, of the *UCITS Directive* and article 45(1) of the *UCITS implementing Directive*]

- 6.12.4 G
- (1) The risk management process in *COLL* 6.12.3R should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
 - (2) The *depository* of a *UCITS scheme* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL* 6.6.4R (General duties of the depository) and *COLL* 6.6.14R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
 - (3) An *authorised fund manager* or a *UK UCITS management company* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
 - (4) An *authorised fund manager* or a *UK UCITS management company* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC* 4.1 (General requirements).
 - (5) The risk management process should enable the analysis required by *COLL* 6.12.3R to be undertaken at least daily or at each *valuation point*, whichever is more frequent.
 - (6) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* should undertake the risk assessment required by *COLL* 5.2.20R(7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the *derivative* transaction is an *associate* of the *authorised fund manager*, the *UK UCITS management company* or the credit issuer.

[**Note:** *CESR's UCITS eligible assets guidelines* with respect to article 8(2)(d) of the *UCITS eligible assets Directive*]

Risk management policy

- 6.12.5 R
- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that *scheme* is or might be exposed.
 - (2) The risk management policy must comprise such procedures as are necessary to enable the *authorised fund manager* or *UK UCITS management company* to assess the exposure of each *UCITS* it manages to *market risk*, *liquidity risk* and *counterparty risk*, and to all other risks, including *operational risk*, that might be material for that *scheme*.

- (3) The risk management policy must address at least the following elements:
- (a) the techniques, tools and arrangements that enable the *authorised fund manager* or *UK UCITS management company* to comply with the obligations set out in this section and *COLL 5.3* (Derivative exposure);
 - (b) the allocation of responsibilities within the *authorised fund manager* or *UK UCITS management company* pertaining to risk management; and
 - (c) the terms, contents and frequency of reporting of the risk management function referred to in *COLL 6.11.2R* (Permanent risk management function) to the *governing body*, *senior personnel* and, where appropriate, to the *supervisory function*.
- (4) To meet its obligations in (1), (2) and (3) an *authorised fund manager* or a *UK UCITS management company* must take into account the nature, scale and complexity of its business and of the *UCITS* it manages.

[**Note:** article 38 of the *UCITS implementing Directive*]

- 6.12.6 G *UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL 6.12.5R(3)(a)* are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 40 and 41 of the *UCITS implementing Directive*.

Monitoring of risk management policy

- 6.12.7 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must assess, monitor and periodically review:
- (a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in *COLL 6.12.5R*;
 - (b) the level of compliance by the *authorised fund manager* or the *UK UCITS management company* with the risk management policy and with those arrangements, processes and techniques referred to in *COLL 6.12.5R*; and
 - (c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

- (2) The *authorised fund manager* (excluding an *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme* must notify the *FSA* of any material changes to the risk management process.

[**Note:** article 39(1) and 39(2) of the *UCITS implementing Directive*]

- 6.12.8 G *UK UCITS management companies* are advised that when they applied for *authorisation* from the *FSA* under the *Act*, their ability to comply with the requirements in *COLL 6.12.7R* would have been assessed by the *FSA* as an aspect of their fitness and properness in determining whether the *threshold conditions* set out in Schedule 6 (Threshold conditions) of the *Act* were met. *Firms* are further advised that their compliance with these requirements is subject to review by the *FSA* on an ongoing basis in determining whether they continue to meet the *threshold conditions*.

[**Note:** article 39(3) of the *UCITS implementing Directive*]

Measurement and management of risk

- 6.12.9 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must adopt adequate and effective arrangements, processes and techniques in order to:
- (a) measure and manage at any time the risks to which that *UCITS* is or might be exposed; and
 - (b) ensure compliance with limits concerning global exposure and *counterparty risk*, in accordance with *COLL 5.2.11BR* (Counterparty risk and issuer concentration) and *COLL 5.3* (Derivative exposure).
- (2) For the purposes of (1), the *authorised fund manager* or a *UK UCITS management company* must take the following actions for each *UCITS* it manages:
- (a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
 - (b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
 - (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the *UCITS*;

- (d) establish, implement and maintain a *risk limit system* for each *UCITS*;
 - (e) ensure that the current level of risk complies with that *risk limit system*; and
 - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that *risk limit system*, result in timely remedial actions in the best interests of *unitholders*.
- (3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* or the *UK UCITS management company* and the *UCITS* it manages and be consistent with the *UCITS'* risk profile.

[**Note:** articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10 G *UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL 6.12.9R(1)(b)* are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 41 and 43 of the *UCITS implementing Directive*.

6.12.11 R (1) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must employ an appropriate *liquidity risk* management process in order to ensure that each *UCITS* it manages is able to comply at any time with *COLL 6.2.16R* (Sale and redemption) or the equivalent *UCITS Home State* measures implementing article 84(1) of the *UCITS Directive*.

(2) Where appropriate, the *authorised fund manager* or *UK UCITS management company* must conduct stress tests to enable it to assess the *liquidity risk* of the *UCITS* under exceptional circumstances.

[**Note:** article 40(3) of the *UCITS implementing Directive*]

6.12.12 R An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that, for each *UCITS* it manages, the liquidity profile of the investments of the *scheme* is appropriate to the *redemption* policy laid down in the *instrument constituting the scheme* or the *prospectus*.

[**Note:** article 40(4) of the *UCITS implementing Directive*]

CESR guidelines: Risk management principles for UCITS

- 6.12.13 G *Authorised fund managers* are advised that CESR issued guidelines prior to the revision of the *UCITS Directive* in 2009 which, to the extent they remain compatible with the *rules* and other *guidance* in *COLL*, should be complied with in applying the *rules* in this section. These guidelines are available at:

Guidelines – Risk management principles for UCITS (CESR/09-178)

http://www.esma.europa.eu/index.php?page=document_details&id=5620&from_id=28

6.13 Record keeping

Application

- 6.13.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

Recording of portfolio transactions

- 6.13.2 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure, for each portfolio transaction relating to a *scheme* it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.
- (2) The record referred to in (1) must include:
- (a) the name or other designation of the *scheme* and of the *person* acting on behalf of the *scheme*;
 - (b) the details necessary to identify the instrument in question;
 - (c) the quantity;
 - (d) the type of the order or transaction;
 - (e) the price;
 - (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the *person* to whom

the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

- (g) the name of the *person* transmitting the order or executing the transaction;
- (h) where applicable, the reasons for the revocation of an order; and
- (i) for executed transactions, the counterparty and *execution venue* identification.

[**Note:** article 14 of the *UCITS implementing Directive*]

Recording of subscription and redemption orders

- 6.13.3 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must take all reasonable steps to ensure that every subscription and *redemption* order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of that order.
- (2) The record referred to in (1) must include information on the following:
- (a) the relevant *scheme*;
 - (b) the *person* giving or transmitting the order;
 - (c) the *person* receiving the order;
 - (d) the date and time of the order;
 - (e) the terms and means of payment;
 - (f) the type of the order;
 - (g) the date of execution of the order;
 - (h) the number of *units* subscribed or redeemed;
 - (i) the subscription or *redemption* price for each *unit*;
 - (j) the total subscription or *redemption* value of the *units*; and
 - (k) the gross value of the order including charges for subscription or net amount after charges for *redemption*.

[**Note:** article 15 of the *UCITS implementing Directive*]

Recordkeeping requirements

- 6.13.4 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure the retention of the records referred to in *COLL 6.13.2R* and *COLL 6.13.3R*

for a period of at least five years or, in exceptional circumstances and where directed by the *FSA*, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the *FSA* to exercise its supervisory functions under the *UCITS Directive*.

- (2) Following the termination of its authorisation, an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the *UCITS* to another *authorised fund manager* or *management company*, arrange for those records for the past five years to be accessible to that other manager.
- (3) The *authorised fund manager* or the *UK UCITS management company* must retain the records referred to in *COLL 6.13.2R* and *COLL 6.13.3R* in a medium that allows the storage of information in a way accessible for future reference by the *FSA*, and in such a form and manner that the following conditions are met:
 - (a) the *FSA* must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
 - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and
 - (c) it must not be possible for the records to be otherwise manipulated or altered.

[**Note:** article 16 of the *UCITS implementing Directive*]

Electronic data processing

- 6.13.5 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or *redemption* order, in order to be able to comply with *COLL 6.13.2R* (Recording of portfolio transactions) and *COLL 6.13.3R* (Recording of subscription and redemption orders).

[**Note:** article 7(1) of the *UCITS implementing Directive*]

- 6.13.6 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure a high level of security during the electronic data processing referred to in *COLL 6.13.5R* as well as the integrity and confidentiality of the recorded information, as appropriate.

[**Note:** article 7(2) of the *UCITS implementing Directive*]

After COLL 6.13 insert the following new Annex. The text is not underlined.

6 Annex 1R Particulars of the standard agreement between an EEA UCITS management company and a depositary

This table belongs to *COLL 6.6.4R(7)(b)* (General duties of the depositary) on the conclusion and prescribed minimum content of a standard agreement between an *EEA UCITS management company* (which is an *authorised fund manager* of a *UCITS scheme*) and the *depositary* of that *scheme*.

Contents of the standard agreement	
(1)	Provisions related to the procedures to be followed by the parties to the agreement:
(a)	a description of the procedures, included those relating to the safekeeping, to be adopted for each type of asset of the <i>UCITS scheme</i> that is entrusted to the <i>depositary</i> ;
(b)	a description of the procedures to be followed where the <i>authorised fund manager</i> envisages a modification of the <i>instrument constituting the scheme</i> or the <i>prospectus</i> of the <i>UCITS scheme</i> , and identifying when the <i>depositary</i> should be informed, or where a prior agreement from the <i>depositary</i> is needed to proceed with the modification;
(c)	a description of the means and procedures by which the <i>depositary</i> will transmit to the <i>authorised fund manager</i> all relevant information that the <i>authorised fund manager</i> needs to perform its duties, including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the <i>authorised fund manager</i> and the <i>UCITS scheme</i> to have timely and accurate access to information relating to the accounts of the <i>UCITS scheme</i> ;
(d)	a description of the means and procedures by which the <i>depositary</i> will have access to all relevant information it needs to perform its duties;
(e)	a description of the procedures by which the <i>depositary</i> has the ability to enquire into the conduct of the <i>authorised fund manager</i> and to assess the quality of information transmitted, including by way of on-site visits; and
(f)	a description of the procedures by which the <i>authorised fund manager</i> can review the performance of the <i>depositary</i> in respect of the <i>depositary's</i> contractual obligations.

	[Note: article 30 of the <i>UCITS implementing Directive</i>]	
(2)	Provisions related to the exchange of information and to obligations on confidentiality and money laundering:	
	(a)	a list of all the information that needs to be exchanged between the <i>UCITS scheme</i> , its <i>authorised fund manager</i> and <i>depository</i> related to the <i>issue, cancellation, sale and redemption of units of the UCITS scheme</i> ;
	(b)	the confidentiality obligations applicable to the parties to the agreement. These obligations must be drawn up so as not to impair the ability of either the <i>FSA</i> or the <i>Home State regulator</i> of the <i>EEA UCITS management company</i> to gain access to relevant <i>documents</i> and information; and
	(c)	information on the duties and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.
	[Note: article 31 of the <i>UCITS implementing Directive</i>]	
(3)	Provisions related to the appointment of third parties:	
	In cases where the parties to the agreement envisage the appointment of third parties to carry out their duties, the following provisions:	
	(a)	an undertaking by both parties to provide details, on a regular basis, of any third parties appointed by the <i>depository</i> or the <i>authorised fund manager</i> to carry out their respective duties;
	(b)	an undertaking that on request by one of the parties, the other will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party; and
	(c)	a statement that a <i>depository's</i> liability as referred to at <i>COLL 6.6.15R(5)</i> (Committees and delegation) will not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.
	[Note: article 32 of the <i>UCITS implementing Directive</i>]	
(4)	Provisions related to potential amendments and the termination of the agreement:	
	(a)	the period of validity of the agreement;
	(b)	the conditions under which the agreement may be amended or

	terminated; and
(c)	conditions which are necessary to facilitate transition to another <i>depository</i> and, in the event of that transition, the procedure by which the <i>depository</i> should send all relevant information to the other <i>depository</i> .
	[Note: article 33 of the <i>UCITS implementing Directive</i>]
(5)	Applicable law:
	A provision specifying that the law of the <i>United Kingdom</i> applies to the agreement.
	[Note: article 34 of the <i>UCITS implementing Directive</i>]
(6)	Electronic transmission of information:
	In cases where the parties to the agreement agree to the use of electronic transmission for part or all of the information that is to flow between them, a provision ensuring that a record is kept of that information.
	[Note: article 35 of the <i>UCITS implementing Directive</i>]
(7)	Scope of the agreement:
	Where the agreement is to cover more than one <i>UCITS scheme</i> managed by the <i>authorised fund manager</i> , a provision listing the <i>UCITS schemes</i> covered by the agreement.
	[Note: article 36 last sentence of the <i>UCITS implementing Directive</i>]
(8)	Service level agreement:
	The parties to the agreement may include either in the agreement or in a separate written agreement the details of the means and procedures referred to in (1)(c) and (d).
	[Note: article 37 of the <i>UCITS implementing Directive</i>]

Amend the following as shown.

7 Suspension of dealing and termination of authorised funds

7.1 Introduction

Application

7.1.1 R (1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of a ~~an~~ *ICVC*,

a *depository* of an *ICVC*, a *manager* of an *AUT* and a *trustee* of an *AUT*, where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme* in accordance with *COLL 7.1.2R* (Table of application).

- (2) *COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.*

Table of application

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

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depository of an ICVC</i>	<i>Manager</i>	<i>Trustee</i>
...						
<u>7.7</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
...						

...

Requirement

7.2.1 R ...

[Note: article 45(2) of the *UCITS Directive*]

Temporary suspension of units of a master UCITS

7.2.1A R Where:

- (1) an authorised fund manager of a UCITS scheme which is a master UCITS temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FSA; or
- (2) an operator of an EEA UCITS scheme which is a master UCITS temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of its Home State regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS.

[Note: article 60(3) of the *UCITS Directive*]

...

Schemes of arrangement: explanation

7.6.1 G ...

- (3) COLL 7.6.2R(3) to (6) apply to a domestic UCITS merger and cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.

...

After COLL 7.6 insert the following new section. The text is not underlined.

7.7 UCITS mergers

Application

7.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT* or *ICVC*, any other *director* of an *ICVC* and the *depository* of any such *scheme* where, in each case, the *AUT* or *ICVC* is a *UCITS scheme* that is a party to:

- (1) a *domestic UCITS merger*; or
- (2) a *cross-border UCITS merger*.

7.7.2 G (1) The effect of *COLL 7.7.1R*, and in particular the narrow *Glossary* definition of *domestic UCITS merger* which is drafted in accordance with article 2.1(r) of the *UCITS Directive*, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them has been the subject of a *UCITS marketing notification*.

- (2) For arrangements to constitute a *cross-border UCITS merger*, at least two of the relevant *UCITS* must be:
 - (a) established in different *EEA States*; or
 - (b) established in the same *EEA State* and be merging into a newly constituted *UCITS* established in another *EEA State*.

References to a UCITS scheme

7.7.3 R In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS*, a *receiving UCITS* or to an *EEA UCITS scheme* include the *sub-fund* of any such *scheme*;
- (2) the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.

[**Note:** article 37 of the *UCITS Directive*]

UCITS mergers

- 7.7.4 R A *domestic UCITS merger* between two or more *UCITS schemes*, or a *cross-border UCITS merger* between one or more *UCITS schemes* which is or are the *merging UCITS* and one or more *EEA UCITS schemes*, is permissible provided:
- (1) it is effected in accordance with the requirements of:
 - (a) the *UCITS Regulations 2011*, which include the need for the *FSA* to have made a prior order approving the proposed merger (which may be made subject to (2)); and
 - (b) this chapter; and
 - (2) in the case of a *UCITS scheme* that is:
 - (a) a *merging UCITS* in a *domestic* or *cross-border UCITS merger*, an *extraordinary resolution* is approved by *unitholders* in accordance with *COLL 7.6.2R(3)* and (4) (Schemes of arrangement: requirements); and
 - (b) a *receiving UCITS* in a *domestic* or *cross-border UCITS merger*, the *manager* and *trustee* of the *AUT* and the *directors* of the *ICVC* comply with *COLL 7.6.2R(5)* and (6).

[**Note:** articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

Meetings of unitholders

- 7.7.5 G (1) The effect of *COLL 7.7.4R(2)(a)* is that the 75% majority that is needed in support for an *extraordinary resolution* of *unitholders* to be passed is without prejudice to the presence quorum that is required by *COLL 4.4.6R* (Quorum).
- (2) Any meeting of *unitholders* that is needed to give effect to a proposed *UCITS merger* is subject to the requirements of *COLL 4.4* (Meeting of unitholders and service of notices).

UCITS Regulations 2011

- 7.7.6 G (1) The requirements and the process which must be followed to give effect to a proposal for a *UCITS merger* as specified by Chapter VI of the *UCITS Directive* (see articles 37 to 48) have been implemented in the *United Kingdom* by the provisions of Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:
- (a) the different types of merger operation that will be recognised for a *UCITS merger*;
 - (b) the need for the *FSA* to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the *UCITS Regulations 2011*, where the arrangements proposed constitute either:

- (i) a *domestic UCITS merger*; or
 - (ii) a *cross-border UCITS merger* in which the *merging UCITS* is a *UCITS scheme* (a *UK UCITS*);
- (c) the information that has to be given to the *FSA* in order to obtain the approval under (b);
 - (d) the need for draft terms of merger to be prepared;
 - (e) the role of the relevant *depositories* and *auditors*;
 - (f) the need for appropriate and accurate information to be prepared for the benefit of *unitholders*;
 - (g) rights of *redemption* and suspension of *dealing* in *units* in the relevant *UCITS*; and
 - (h) the consequences of the proposed merger.
- (2) *Firms* are advised that they do not need to seek approval from the *FSA* under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act* or, as the case may be, regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* where they are required to obtain the prior approval of the *FSA* to a proposed merger under regulation 9 of the *UCITS Regulations 2011*.
 - (3) A summary of how the regime for *UCITS mergers* operates is to be found in *COLLG*.

Common draft terms of merger

- 7.7.7 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger*, must in conjunction with any other *authorised fund manager* or, as the case may be, *management company* of an *EEA UCITS scheme* that is a party to the proposed merger, draw up common draft terms of the proposed *UCITS merger*.
- (2) The common draft terms in (1) must set out the following particulars:
- (a) an identification of the type of *UCITS merger* and of the *UCITS* involved;
 - (b) the background to and the rationale for the proposed *UCITS merger*;
 - (c) the expected impact of the proposed *UCITS merger* on the *unitholders* of both the *merging UCITS* and the *receiving UCITS*;

- (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the *UCITS* on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the *UCITS Regulations 2011*;
- (e) the calculation method of the exchange ratio;
- (f) the planned effective date of the *UCITS merger*;
- (g) the rules applicable respectively to the transfer of assets and the exchange of *units*; and
- (h) in the case of a *UCITS merger* where the *receiving UCITS* or the *sub-fund* is being specially formed for the purpose, the *instrument constituting the scheme* of the newly constituted *receiving UCITS*.

[**Note:** article 40(1) of the *UCITS Directive*]

- 7.7.8 G The *management companies* of the *merging UCITS* and the *receiving UCITS* may decide to include further items in the common draft terms of the *UCITS merger*.

[**Note:** article 40(2) of the *UCITS Directive*]

Verification by the depositary

- 7.7.9 R The *depositary* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must verify that the statements in the common draft terms of merger required under *COLL 7.7.7R (2)(a), (f) and (g)*, to the extent they relate to the *scheme* for which it is the *depositary*, conform with the provisions of the *regulatory system* and the *instrument constituting the scheme*.

[**Note:** article 41 of the *UCITS Directive*]

Information to be given to unitholders

- 7.7.10 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must ensure that a *document* containing appropriate and accurate information on the merger is provided to the *unitholders* of that *scheme* so as to enable them to:
- (a) make an informed judgment about the impact of the proposal on their investment;
 - (b) exercise their rights under regulation 12 (Right of redemption) of the *UCITS Regulations 2011*; and
 - (c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with *COLL 7.7.4R(2)(a)* (*UCITS mergers*).

(2) Where a *UCITS scheme* is the *merging UCITS* in a *domestic UCITS merger* or *cross-border UCITS merger*, its *authorised fund manager* must provide the *information document* in (1):

- (a) to the *unitholders* of the *merging UCITS* and (in the case of a *domestic UCITS merger*) the *receiving UCITS* only after the *FSA* has given its approval to the *UCITS merger* proposal under regulation 9 of the *UCITS Regulations 2011*; and
- (b) where the *receiving UCITS* (in the case of a *cross-border UCITS merger*) is an *EEA UCITS scheme*, to the *unitholders* of that *scheme* only after the *Home State regulator* of each *merging UCITS* has authorised the *UCITS merger* proposal under national measures implementing article 39 of the *UCITS Directive*;

and in either case must do so at least 30 days before the last date by which *unitholders* may request repurchase or *redemption* of their *units* or, where applicable, conversion without additional charge.

(3) The *information document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:

- (a) the background to and the rationale for the proposed *UCITS merger*;
- (b) the possible impact of the proposed *UCITS merger* on *unitholders*, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the *UCITS merger*;
- (c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:
 - (i) the right to obtain additional information;
 - (ii) the right to obtain a copy of the report of the independent auditor or the *depository* on request;
 - (iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*; and
 - (iv) the last date for exercising that right;
- (d) the relevant procedural aspects and the planned effective date of the merger; and

- (e) a copy of the *key investor information* of the *receiving UCITS*.
- (4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant *Host State* in which *units* of the *UCITS scheme* are to be marketed, or in a language approved by its *Host State regulator*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[**Note:** article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

General rules regarding the content of merger information to be provided to unitholders

- 7.7.11 R (1) The information *document* that must be provided to *unitholders* under *COLL 7.7.10R* (Information to be given to unitholders) by the *authorised fund manager* of a *UCITS scheme* must be written in a concise manner and in non-technical language.
- (2) In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.
- (3) The information to be provided to the *unitholders* of the *merging UCITS* must meet the needs of investors who have no prior knowledge of the features of the *receiving UCITS* or of the manner of its operation, drawing their attention to the *key investor information* of the *receiving UCITS* and emphasising the desirability of reading it.
- (4) The information to be provided to the *unitholders* of the *receiving UCITS* must focus on the operation of the merger and its potential impact on the *receiving UCITS*.

[**Note:** article 3 of the *UCITS implementing Directive No 2*]

- 7.7.12 G (1) The information provided to *unitholders* under *COLL 7.7.10R* and *COLL 7.7.13R* on any proposed *merger* should reflect the different needs of the *unitholders* of the *merging UCITS* and the *receiving UCITS* and assist their understanding of what is being proposed.
- (2) The reference to “conversion” in *COLL 7.7.10R(2)* means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* or *EEA UCITS scheme* that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[**Note:** recital (1) of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders

of the merging UCITS

- 7.7.13 R (1) Where the *merging UCITS* is a *UCITS scheme*, the information document that its *authorised fund manager* must provide to its *unitholders* under *COLL 7.7.10R(3)(b)* must also include:
- (a) details of any differences in the rights of *unitholders* of the *merging UCITS* before and after the proposed *UCITS merger* takes effect;
 - (b) if the *key investor information* of the *merging UCITS* and the *receiving UCITS* show *synthetic risk and reward indicators* in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
 - (c) a comparison of all charges, fees and expenses for both *schemes*, based on the amounts disclosed in their respective *key investor information*;
 - (d) if the *merging UCITS* applies a performance-related fee, an explanation of how it will be applied up to the point at which the *merger* becomes effective;
 - (e) if the *receiving UCITS* applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those *unitholders* who previously held *units* in the *merging UCITS*;
 - (f) in cases where costs associated with the preparation and the completion of the *merger* may be charged to either the *merging* or the *receiving UCITS* or any of their *unitholders*, details of how those costs are to be allocated; and
 - (g) an explanation of whether the *authorised fund manager* of the *merging UCITS* itself intends to undertake any *rebalancing of the portfolio* before the merger takes effect.
- (2) The information to be provided under *COLL 7.7.10R(3)(c)* must also include:
- (a) details of how any accrued income in each *scheme* is to be treated; and
 - (b) an indication of how the report of the independent auditor or the *depository* may be obtained.
- (3) The information to be provided in accordance with *COLL 7.7.10R(3)(d)* must include:
- (a) where required by *COLL 7.6.2R* (Schemes of arrangement: requirements), the procedure by which *unitholders* will be asked to approve the merger proposal, and what arrangements will be

- made to inform them of the outcome;
- (b) the details of any intended suspension of *dealing* in *units* to enable the merger to be carried out efficiently; and
 - (c) when the merger will take effect in accordance with regulation 13 of the *UCITS Regulations 2011*.
- (4) The information to be provided to the *unitholders* of the *merging UCITS* must include:
- (a) the period during which those *unitholders* will be able to continue making subscriptions and requesting *redemptions* of *units* in the *scheme*;
 - (b) the time when those *unitholders* not making use of their rights granted under regulation 12 of the *UCITS Regulations 2011*, within the relevant time limit, will be able to exercise their rights as *unitholders* of the *receiving UCITS*; and
 - (c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the *unitholders* of the *merging UCITS*, those *unitholders* who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the *UCITS Regulations 2011* within the relevant time limit, will become *unitholders* of the *receiving UCITS*.
- (5) If a summary of the key points of the merger proposal is provided at the beginning of the *document* providing information on the merger proposal, it must cross-refer to the parts of the *document* where further information is provided.

[**Note:** article 4 of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

- 7.7.14 R (1) Where the *receiving UCITS* is a *UCITS scheme*, the information that its *authorised fund manager* must provide to its *unitholders* under *COLL 7.7.10(3)(b)* must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the *receiving UCITS*, and whether it intends to undertake any *rebalancing of the portfolio* either before or after the merger takes effect.
- (2) In addition to (1), the *authorised fund manager* of the *receiving UCITS* must provide to its *unitholders* the information referred to in *COLL 7.7.13R(2), (3), and (5)*.

[**Note:** article 4 of the *UCITS implementing Directive No 2*]

- 7.7.15 G (1) An *authorised fund manager* may add other information to that which is required by *COLL 7.7.12R* to *COLL 7.7.14R* if it considers that it is relevant in the context of the proposed *UCITS merger*. For example, it may be appropriate for the information provided in accordance with *COLL 7.7.13R(3)(a)* to contain a recommendation by the respective *manager* of an *AUT* or the *directors* of an *ICVC* as to the course of action the *unitholders* should take.
- (2) Where an *authorised fund manager* chooses to include a summary of the key points as allowed by *COLL 7.7.13R(5)*, its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.

[**Note:** recitals (2) and (3) and article 4(6) of the *UCITS implementing Directive No 2*]

Key investor information

- 7.7.16 R The *authorised fund manager* of a *merging UCITS* must provide an up-to-date version of the *key investor information* of the *receiving UCITS* to its existing *unitholders*.

[**Note:** article 5(1) of the *UCITS implementing Directive No 2*]

- 7.7.17 R (1) Where a *UCITS scheme* is the *receiving UCITS* in a *cross-border UCITS merger*, its *authorised fund manager* must ensure that an up-to-date version of the *key investor information document* of the *receiving UCITS* is made available to the *management company* of the *merging UCITS* for the purpose of providing it to investors in that *UCITS*.
- (2) Where the *key investor information document* of the *receiving UCITS* has been amended for the purpose of (1), the *authorised fund manager* of the *receiving UCITS* must also provide it to all its existing *unitholders*.

[**Note:** article 5(2) of the *UCITS implementing Directive No 2*]

New unitholders

- 7.7.18 R Between the date when the information required under *COLL 7.7.10R* is provided to *unitholders* and the date when the merger takes effect, the information document and the up-to-date *key investor information* of the *receiving UCITS* must be provided to each *person* who purchases or subscribes for *units* in either the *merging UCITS* or the *receiving UCITS* or who asks to receive copies of the *instrument constituting the scheme*, *prospectus* or *key investor information* of either *scheme*.

[**Note:** article 6 of the *UCITS implementing Directive No 2*]

Method of providing merger information to unitholders

- 7.7.19 R The *authorised fund manager* of the *merging UCITS* and the *receiving UCITS*

must provide the information required by *COLL 7.7.10R* to *COLL 7.7.14R* to *unitholders* in a *durable medium*.

[**Note:** article 7 of the *UCITS implementing Directive No 2*]

Merger costs

- 7.7.20 R The *authorised fund manager* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the *UCITS merger* are not charged to either *scheme* or to any of its *unitholders*.

[**Note:** article 46 of the *UCITS Directive*]

Effective merger date, exchange ratio calculation date and publication of merger

- 7.7.21 G (1) In a *domestic UCITS merger*, the effective date of the merger will be the date specified by the *FSA* in its order authorising the proposed merger in accordance with regulation 9 of the *UCITS Regulations 2011*.
- (2) For a *UCITS scheme* which is the *receiving UCITS* in a *cross-border UCITS merger*, the effective date of the merger will be the date agreed by the *FSA* and the *merging UCITS' Home State regulator*.
- (3) For a *UCITS scheme* which is the *receiving UCITS* in a *domestic UCITS merger* or a *cross-border UCITS merger*:
- (a) the date for calculating the exchange ratio of *units* of the *merging UCITS* into *units* of the *receiving UCITS* and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and
- (b) the *FSA* will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the *Act* in accordance with regulation 14 of the *UCITS Regulations 2011*.
- (4) For a *UCITS scheme* which is the *merging UCITS* in a *cross-border UCITS merger*, the dates referred to in (2) and (3)(a) will be determined by the laws of the *receiving UCITS Home State*. Those dates will be after the date on which the merger proposal has been approved in accordance with *COLL 7.7.4R (2)(a)* (*UCITS mergers*).

[**Note:** article 47 of the *UCITS Directive*]

Confirmation obligation on completion of a UCITS merger

- 7.7.22 R The *authorised fund manager* of a *UCITS scheme* that is the *receiving UCITS* in either a *domestic* or *cross-border UCITS merger* must confirm in writing to the *depository* of the *UCITS scheme* and the *FSA* that the merger transfer is complete.

[**Note:** article 48(4) of the *UCITS Directive*]

- 7.7.23 G Regulation 13 of the *UCITS Regulations 2011* sets out the conditions that must be fulfilled for a merger transfer to be considered complete.

Amend the following as shown.

9.2 Section 264 recognised schemes

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

- 9.2.1 G (1) ~~If the *operator* of a *collective investment scheme* constituted in a *EEA State* gives notice to the *FSA* under section 264 of the *Act*, it should include the information described in paragraphs (2) to (4) below (see the *Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001 (SI 2001/2383)*, as amended):~~ ~~[deleted]~~
- (2) ~~The *documents* must be in English, or accompanied by a translation in English.~~ ~~[deleted]~~
- (3) ~~The *documents* should be certified by the *operator* to be true copies of the original.~~ ~~[deleted]~~
- (4) ~~The *FSA* will need the following information and documentation in connection with the notification:~~
- (a) ~~the name of the *scheme*;~~
- (b) ~~the legal form of the *scheme*;~~
- (c) ~~the name and address of the *operator*;~~
- (d) ~~the address of the place in the *United Kingdom* for the service on the *operator* of notices or other *documents*;~~
- (e) ~~the name and address of any supervisory authority or authorities to which the *operator* is subject in the *EEA State* in which it is established;~~
- (f) ~~whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;~~
- (g) ~~the name and address of the *depository*;~~

- (h) ~~the address in the *United Kingdom* where the *scheme* facilities (see *COLL 9.4*) will be maintained;~~
- (i) ~~details of the arrangements for the *marketing of units* in the *United Kingdom*, namely:~~
 - (i) ~~the proposed commencement date;~~
 - (ii) ~~whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;~~
- (j) ~~the attestation or certificate from the authorities of the *EEA State* in which the *scheme* is authorised which demonstrates that the *scheme* complies with the *UCITS Directive*;~~
- (k) ~~a copy of the *instrument constituting the scheme*;~~
- (l) ~~a copy of the *prospectus* and the simplified prospectus of the *scheme*; and~~
- (m) ~~a copy of the latest annual report and any subsequent half yearly report. [deleted]~~

Marketing of units of an EEA UCITS scheme

- 9.2.2 G (1) The *units* of an *EEA UCITS scheme* in respect of which a notification has been transmitted to the *FSA* by the *competent authority* of the *UCITS Home State* in accordance with article 93 of the *UCITS Directive* may be marketed in the *United Kingdom*. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the *Act*.
- (2) Where a *management company* wishes to market the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or providing any other services in the *United Kingdom*, a *management company passport* is not required for such *marketing* activities.
- (3) In this Chapter references to an *EEA UCITS scheme* include its *sub-funds*.

[Note: article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]

...

9.4 Facilities in the United Kingdom

...

Documents

- 9.4.2 R (1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the

obtaining (free of charge, in the case of the *documents* at (c) and (d), and otherwise at no more than a reasonable charge) of copies in English of:

...

- (d) for a section 264 *recognised scheme*, the ~~*simplified prospectus*~~ *EEA key investor information document*; and

...

After COLL 10 insert the following new chapters. The text is not underlined.

11 Master-feeder arrangements under the UCITS Directive

11.1 Introduction

Application

11.1.1 R This chapter applies to:

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

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

Table of application

11.1.2 R This table belongs to *COLL 11.1.1R*

Reference	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors</i> of an <i>ICVC</i>	<i>Manager</i>	<i>Trustee</i> of an <i>AUT</i> or <i>depository</i> of an <i>ICVC</i>
11.1.1R	x	x	x	x	x
11.1.3G	x	x	x	x	x
11.2.1G	x	x	x	x	
11.2.2R	x	x	x	x	
11.3.1R	x	x	x	x	

11.3.2R	x	x	x	x	
11.3.3G	x	x	x	x	
11.3.4G	x	x	x	x	
11.3.5R	x	x	x	x	
11.3.6R	x	x	x	x	
11.3.7R	x	x	x	x	
11.3.8R	x	x	x	x	
11.3.9R	x	x	x	x	
11.3.10G	x	x	x	x	
11.3.11R	x	x	x	x	
11.3.12R	x	x	x	x	
11.3.13R	x	x	x	x	
11.3.14G	x	x	x	x	
11.4.1R	x	x	x	x	x
11.4.2R					x
11.4.3R					x
11.4.4G					x
11.4.5G					x
11.5.6R	x	x	x	x	
11.6.1G	x	x	x	x	x
11.6.2R	x	x	x	x	x
11.6.3R	x	x	x	x	
11.6.4R	x	x	x	x	
11.6.5R	x	x	x	x	
11.6.6R	x	x	x	x	
11.6.7R	x	x	x	x	

11.6.8G	x	x	x	x	
11.6.9R	x	x	x	x	
11.6.10R	x	x	x	x	
11.6.11G	x	x	x	x	
11.6.12R	x	x	x	x	
11.6.13R	x	x	x	x	
11 Annex 1R	x	x	x	x	
11 Annex 2R	x	x	x	x	
Note 1: “x” means “applies”, but not every paragraph in every provision referred to will necessarily apply.					
Note 2: <i>COLL</i> 11.5 (with the exception of <i>COLL</i> 11.5.6R) applies to auditors.					

Purpose

- 11.1.3 G (1) This chapter sets out:
- (a) the notification requirements for a *UCITS scheme* to be approved as a *feeder UCITS* under section 283A (Master-feeder structures) of the *Act*; and
 - (b) the requirements which apply to a *feeder UCITS* where its *master UCITS* is wound up, merges with another *UCITS* or is divided into one or more *UCITS*.
- (2) This chapter also ensures there is a flow of information and *documents* between a *feeder UCITS* and its *master UCITS*. In particular, it allows the *authorised fund manager, depositary* and auditor of a *feeder UCITS* to obtain all information and *documents* necessary to perform their functions.
- (3) *COLL* 11.5 (Auditors) also imposes requirements on auditors of a *master UCITS* and a *feeder UCITS*.
- (4) In this section references to:
- (a) a *UCITS scheme*, a *feeder UCITS*, a *master UCITS*, or *EEA UCITS scheme* include the *sub-fund* of any such *scheme* and references to winding up a *scheme* are to be read as also applying to the termination of a *sub-fund*; and
 - (b) the *management company* of an *EEA UCITS scheme* are to the

operator of the scheme.

11.2 Approval of a feeder UCITS

Explanation

- 11.2.1 G (1) Section 283A(1) (Master-feeder structures) of the *Act*, in implementation of article 59(1) of the *UCITS Directive*, provides that the *operator* of a *UCITS scheme* may not invest a higher proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FSA* implementing article 55 of the *UCITS Directive*, unless the investment is approved by the *FSA* in accordance with that section.
- (2) The *FSA* has implemented article 55(1) of the *UCITS Directive* in *COLL 5.2.11R(9)*, which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

Application for approval of an investment in a master UCITS

- 11.2.2 R (1) An application for approval of an investment in a *master UCITS* under section 283A of the *Act* must be accompanied by the following documents:
- (a) the *instrument constituting the scheme* of the *feeder UCITS* and of the *master UCITS*;
 - (b) the *prospectus* and the *key investor information* referred to in *COLL 4.7.2R* (Key investor information) of the *feeder UCITS* and of the *master UCITS*;
 - (c) the *master-feeder agreement* or the internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules);
 - (d) where applicable, the information to be provided to *unitholders* in accordance with *COLL 4.8.3R* (Information to be provided to unitholders);
 - (e) if the *master UCITS* and the *feeder UCITS* have different *depositories*, the information-sharing agreement in accordance with *COLL 11.4.1R(2)* (Information-sharing agreement between depositories); and
 - (f) if the *master UCITS* and the *feeder UCITS* have different auditors, the information-sharing agreement in accordance with *COLL 11.5.1R* (Information-sharing agreement between auditors).
- (2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation by the *master*

UCITS's Home State regulator that the master UCITS:

- (a) is an *EEA UCITS scheme* or a *sub-fund* of it; and
 - (b) fulfils the conditions set out in article 58(3)(b) and (c) of the *UCITS Directive*.
- (3) The *documents* referred to in (1) and (2) must be provided in English.

[**Note:** article 59(3) of the *UCITS Directive*]

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

Authorised fund manager of a master UCITS: provision of documentation

- 11.3.1 R The *authorised fund manager* of a *UCITS scheme* that is a master *UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the *UCITS Directive*.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

Master-feeder agreement and internal conduct of business rules

- 11.3.2 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must enter into a *master-feeder agreement* which, at a minimum, complies with *COLL 11 Annex 1R*.
- (2) Where a *master UCITS* and a *feeder UCITS* are managed by the same *management company*, the *master-feeder agreement* may be replaced by internal conduct of business rules which, at a minimum, comply with *COLL 11 Annex 2R*.
- (3) The *authorised fund manager* of a *feeder UCITS* must not invest in *units* of the *master UCITS* in excess of the limit applicable under *COLL 5.2.11R(9)* (Spread: general) (20%) until the period of 30 calendar days referred to in *COLL 4.8.3R(1)* (Information to be provided to unitholders) has elapsed and the following have become effective:
- (a) the *master-feeder agreement*, or, if applicable under (2), the internal conduct of business rules;
 - (b) the information-sharing agreement of the *depositories* in accordance with *COLL 11.4.1R(2)* (Information-sharing agreement between depositories); and
 - (c) the information-sharing agreement of the auditors in accordance with *COLL 11.5.1R* (Information-sharing agreement between auditors).

- (4) An *authorised fund manager* of a *feeder UCITS* must make a copy of the *master-feeder agreement* or, where applicable, the internal conduct of business rules, available to *unitholders* free of charge on their request.

[**Note:** article 60(1) first paragraph last sentence, second and third paragraphs, article 61(1) second paragraph, article 62(1) second paragraph and article 64 third paragraph of the *UCITS Directive*]

- 11.3.3 G Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in *COLL 11 Annex 1R* and *COLL 11 Annex 2R* to *COLL rules* implementing provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as referring to the corresponding provisions in the laws and regulations of that *EEA State*.

- 11.3.4 G In relation to the requirements in *COLL 11 Annex 1(3)* and *Annex 2(2)*, where the dealing arrangements between a *master UCITS* and a *feeder UCITS* do not differ from those applying to all non-*feeder UCITS unitholders* of the *master UCITS*, the *master-feeder agreement* or the internal conduct of business rules do not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the *prospectus* of the *master UCITS*.

[**Note:** recital (8) to the *UCITS implementing Directive No 2*]

Law applicable to the master-feeder agreement

- 11.3.5 R (1) Where the *feeder UCITS* and the *master UCITS* are *UCITS schemes*, the *master-feeder agreement* must provide that the law of a specified part of the *United Kingdom* applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the *United Kingdom*.
- (2) Where the *feeder UCITS* and the *master UCITS* are established in different *EEA States*, the *master-feeder agreement* must provide that the applicable law shall be either:
- (a) the law of the *EEA State* in which the *feeder UCITS* is established;
or
 - (b) the law of the *EEA State* in which the *master UCITS* is established;

and that both parties agree to the exclusive jurisdiction of the courts of the *EEA State* whose law they have stipulated to be applicable to the agreement.

[**Note:** article 14 of the *UCITS implementing Directive No 2*]

Avoidance of opportunities for market timing

- 11.3.6 R (1) The *authorised fund managers* of a *master UCITS* and its *feeder UCITS* must take appropriate measures to co-ordinate the timing of their net asset value calculation and publication, including the publication of *dealing prices*, in order to avoid market timing in their *units*, preventing arbitrage opportunities.
- (2) Where either the *master UCITS* or *feeder UCITS* is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[**Note:** article 60(2) of the *UCITS Directive*]

Obligations of the feeder UCITS

- 11.3.7 R (1) An *authorised fund manager* of a *feeder UCITS* must monitor effectively the activity of the *master UCITS*.
- (2) In performing this obligation, the *authorised fund manager* of the *feeder UCITS* may rely on information and *documents* received from the *master UCITS*, or where applicable, the *master UCITS' management company*, *depository* or auditor, unless there is a reason for doubting their accuracy.

[**Note:** article 65(1) of the *UCITS Directive*]

Inducements

- 11.3.8 R Where, in connection with an investment in the *units* of the *master UCITS*, a distribution fee, commission or other monetary benefit is received by:
- (1) a *feeder UCITS*; or
- (2) an *authorised fund manager* of a *feeder UCITS*; or
- (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder UCITS*.

[**Note:** article 65(2) of the *UCITS Directive*]

Obligations of the master UCITS

- 11.3.9 R The *authorised fund manager* of a *master UCITS* must immediately inform the *FSA* of the identity of each *feeder UCITS* which invests in its *units*.

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

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

immediately.

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

- 11.3.11 R (1) An *authorised fund manager* of a *master UCITS* must not impose any *preliminary charge* or *redemption charge* on the *feeder UCITS* for the *issue, sale, redemption* or *cancellation* of *units* in the *master UCITS*.
- (2) Where the *authorised fund manager* of a *master UCITS* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* by a *feeder UCITS* which is, or is like, a *dilution levy* made in accordance with *COLL 6.3.8R* (Dilution) or *SDRT provision* made in accordance with *COLL 6.3.7R* (SDRT provision), it is to be treated as part of the *price* of the *units* and not as part of any charge.

[**Note:** article 66(2) of the *UCITS Directive*]

- 11.3.12 R An *authorised fund manager* of a *master UCITS* must ensure the timely availability of all information that is required in accordance with its obligations under the *regulatory system*, the general law and the *instrument constituting the scheme*, to:
- (1) the *feeder UCITS* (or where applicable its *management company*);
- (2) the *competent authority* of the *feeder UCITS*;
- (3) the *depository* of the *feeder UCITS*; and
- (4) the auditor of the *feeder UCITS*.

[**Note:** article 66(3) of the *UCITS Directive*]

Obligations to unitholders of a master UCITS

- 11.3.13 R The *authorised fund manager* of a *UCITS scheme* that operates, or intends to operate, as a *master UCITS* must:
- (1) not enter into a *master-feeder agreement* or, where applicable, internal conduct of business rules in accordance with *COLL 11.3.2R(2)* unless it is satisfied on reasonable grounds that the arrangements with the *feeder UCITS* will not unfairly prejudice the interests of any other *unitholder* or *class of unitholders* in the *master UCITS*;
- (2) consider, in relation to:
- (a) each item of information it makes available to the *feeder UCITS* or its *management company*; and
- (b) each matter notified by the *depository* of the *master UCITS* in accordance with *COLL 11.4.3R* (Notification of irregularities);

whether it would unfairly prejudice the interests of those *unitholders* in the *master UCITS* other than the *feeder UCITS* by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and

- (3) in relation to any matter within (2)(b) where it does not notify other *unitholders* at the same time:
 - (a) record the grounds for determining that the interests of those *unitholders* are not unfairly prejudiced by its decision; and
 - (b) inform all *unitholders* of that matter in an appropriate manner and timescale.

- 11.3.14 G (1) The appropriate manner and timescale of notification referred to in *COLL* 11.3.13R(2) and (3)(b) will depend on the nature and significance of the matter. Consequently, the *authorised fund manager* will need to assess each matter individually.
- (2) An appropriate manner of notification could include sending an immediate notification to the *unitholders*, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.
- (3) Where *COLL* 11.3.13R(3)(b) applies, it might be appropriate to include the information in the next long report of the *scheme*.

11.4 Depositaries

Information-sharing agreement between depositaries

- 11.4.1 R (1) An *authorised fund manager* of a *feeder UCITS* is responsible for communicating to the *depository* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depository's* regulatory obligations.
- (2) Where a *master UCITS* and its *feeder UCITS* have different *depositaries*, the *depositaries* must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[**Note:** article 61(1) first and fourth paragraphs of the *UCITS Directive*]

Contents of the information-sharing agreement between depositaries

- 11.4.2 R (1) The information-sharing agreement referred to in *COLL* 11.4.1R(2) must include:

- (a) identification of the *documents* and categories of information which are to be routinely shared between both *depositories*, and whether that information or those *documents* are provided by one *depository* to the other or made available on request;
 - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depository* of the *master UCITS* to the *depository* of the *feeder UCITS*;
 - (c) the co-ordination of the involvement of both *depositories*, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
 - (i) the procedure for calculating the net asset value of each *scheme*, including any measures appropriate to protect against the activities of market timing in accordance with COLL 11.3.6R (Avoidance of opportunities for market timing);
 - (ii) the processing of instructions by the *feeder UCITS* to purchase, subscribe or request the repurchase or *redemption* of *units* in the *master UCITS*, and the settlement of those transactions, including any arrangement to transfer assets in kind;
 - (d) the co-ordination of accounting year-end procedures;
 - (e) what details the *depository* of the *master UCITS* must provide to the *depository* of the *feeder UCITS* of breaches by the *master UCITS* of the law and the *instrument constituting the scheme* and how and when those details will be provided;
 - (f) the procedure for handling ad hoc requests for assistance from one *depository* to the other; and
 - (g) identification of particular contingent events which ought to be notified by one *depository* to the other on an ad hoc basis, and how and when this will be done.
- (2) Where a *master-feeder agreement* exists in accordance with COLL 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that:
- (a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement; and
 - (b) both *depositories* agree to the exclusive jurisdiction of the courts of that *EEA State*.

- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that:
- (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and
 - (b) both *depositories* agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.

[**Note:** articles 24 and 25 of the *UCITS implementing Directive No 2*]

Notification of irregularities

- 11.4.3 R (1) Where a *depository* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depository* must immediately inform:
- (a) the *FSA*;
 - (b) the *feeder UCITS* or, where applicable, its *management company*; and
 - (c) the *depository* of the *feeder UCITS*.
- (2) The irregularities referred to in (1) include, but are not limited to:
- (a) errors in the valuation of the *scheme property* performed in accordance with *COLL 6.3.3R* (Valuation);
 - (b) errors in transactions for or settlement of the *sale, issue, repurchase* or *redemption* of *units* in the *scheme* undertaken by the *feeder UCITS*;
 - (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
 - (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the scheme*, the *prospectus* or the *key investor information*; and
 - (e) breaches of investment and borrowing limits set out in *COLL*, the *instrument constituting the scheme*, the *prospectus* or the *key investor information*.

[**Note:** article 61(2) of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No 2*]

- 11.4.4 G (1) When notifying the *FSA* of any irregularities in accordance with *COLL 11.4.3R(1)*, the *depository* of the *master UCITS* should also inform the *depository* of the *feeder UCITS* how the *master UCITS* or its *authorised fund manager* has resolved or proposes to resolve the irregularity.
- (2) Where the *depository* of a *UCITS scheme* that is a *feeder UCITS* is informed by the *depository* of a *master UCITS* of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the *directors*.

[**Note:** recital (16) to the *UCITS implementing Directive No 2*]

Disclosure by a trustee or depository

- 11.4.5 G Section 351A (Disclosure under the *UCITS directive*) of the *Act* provides that where a *trustee* of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.

11.5 Auditors

Information-sharing agreement between auditors

- 11.5.1 R Where a *master UCITS* and a *feeder UCITS* have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with *COLL 11.5.3R* and *COLL 11.5.4R* (Preparation of the audit report).

[**Note:** article 62(1) first paragraph of the *UCITS Directive*]

Contents of the information-sharing agreement between auditors

- 11.5.2 R (1) The information-sharing agreement referred to in *COLL 11.5.1R* must include:
- (a) identification of the *documents* and categories of information which are to be routinely shared between both auditors;
- (b) whether the information or *documents* referred to in (a) are to be

- provided by one auditor to the other or made available on request;
- (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the *master UCITS* to the auditor of the *feeder UCITS*;
 - (d) the co-ordination of the involvement of each auditor in the accounting year-end procedures for their respective *scheme*;
 - (e) identification of matters that must be treated as irregularities and disclosed in the audit report for the *master UCITS* for the purposes of *COLL 11.5.3R(2)*;
 - (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the *master UCITS*; and
 - (g) provisions regarding the preparation of the audit reports referred to in *COLL 11.5.3R* and *COLL 4.5.12R* (Report of the auditor) and the manner and timing for the provision of the audit report for the *master UCITS* (and drafts of it) to the auditor of the *feeder UCITS*.
- (2) Where the *feeder UCITS* and the *master UCITS* have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the *master UCITS* is to make the ad hoc report as required by *COLL 11.5.4R* and to provide it (and drafts of it) to the auditor of the *feeder UCITS*.
- (3) Where a *master-feeder agreement* exists in accordance with *COLL 11.3.2R(1)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:
- (a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement between auditors; and
 - (b) both auditors agree to the exclusive jurisdiction of the courts of that *EEA State*.
- (4) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:
- (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which

the *master UCITS* is established; and

- (b) both auditors agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.

[**Note:** articles 27 and 28 of the *UCITS implementing Directive No 2*]

Preparation of the audit report

11.5.3 R When preparing its audit report, the auditor of a *feeder UCITS* must:

- (1) take into account the audit report of the *master UCITS*; and
- (2) report on any irregularities revealed in the audit report of the *master UCITS* and their impact on the *feeder UCITS*.

[**Note:** article 62(2) first paragraph first sentence and second paragraph of the *UCITS Directive*]

11.5.4 R Where a *master UCITS* and one or more of its *feeder UCITS* have different accounting years, the auditor of the *master UCITS* must make an ad hoc report on the closing date of the accounting year of each *feeder UCITS*.

[**Note:** article 62(2) first paragraph second sentence of the *UCITS Directive*]

Disclosure by an auditor

11.5.5 G Section 351A of the *Act* provides that where an auditor of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for auditors of *ICVCs* that are *feeder UCITS* and *master UCITS*.

Responsibility of authorised fund managers

11.5.6 R The *authorised fund managers* of a *master UCITS* and a *feeder UCITS* must ensure that the terms on which auditors of their respective *schemes* are appointed require each auditor to comply with the *rules* in this section.

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1 G (1) Section 258A(1) and (2) (Winding up or merger of master UCITS) of the *Act*, in implementation of article 60 of the *UCITS Directive*, provides that where a *master UCITS* is wound up, for whatever reason, the *FSA* is to direct the *manager* and *trustee* of any *AUT* which is a

feeder UCITS of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:

- (a) the *FSA* approves under section 283A (Master-feeder structures) of the *Act* the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of another *master UCITS*; or
 - (b) the *FSA* approves under section 252A (Proposal to convert to a non-feeder UCITS) of the *Act* an amendment of the *trust deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A(3) and (4) of the *Act* further provides that where a *master UCITS* merges with another *UCITS* or is divided into two or more *UCITS*, the *FSA* is to direct the *manager* and *trustee* of any *AUT* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) the *FSA* approves under section 283A of the *Act* the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of:
 - (i) the *master UCITS* which results from the merger;
 - (ii) one of the *UCITS* resulting from the division; or
 - (iii) another *UCITS* or *master UCITS*; or
 - (b) the *FSA* approves under section 252A of the *Act* an amendment of the *trust deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (3) The *OEIC Regulations* (see regulations 33A and 33B respectively) contain corresponding provisions for *feeder UCITS* which are structured as *ICVCs*.

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

- 11.6.2 R (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and, where applicable, the *competent authorities* of the *feeder UCITS Home State*, informing them of the binding decision to wind up the *master UCITS*.
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding the compulsory liquidation of *AUTs* or *ICVCs*.

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

Application for approval by a feeder UCITS where a master UCITS is wound up

- 11.6.3 R Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that its *master UCITS* is to be wound up, it must submit to the *FSA* the following:
- (1) where the *authorised fund manager* of the *feeder UCITS* intends to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS*:
 - (a) its application for approval under section 283A of the *Act* for that investment;
 - (b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act* or regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* of any proposed amendments to its *instrument constituting the scheme*;
 - (c) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* (Provision and filing of the prospectus) and *COLL 4.7.7R(1)* (Revision and filing of key investor information); and
 - (d) the other *documents* required in accordance with *COLL 11.2.2R* (Application for approval of an investment in a master UCITS);
 - (2) where the *authorised fund manager* of the *feeder UCITS* intends to convert it into a *UCITS scheme* that is not a *feeder UCITS*:
 - (a) its application for approval under section 252A of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to its *instrument constituting the scheme*; and
 - (b) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*; and
 - (3) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[**Note:** article 20(1) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: winding up of a master UCITS

- 11.6.4 R (1) The information in *COLL 11.6.3R* must be submitted no later than two *months* after the date on which the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up.

- (2) By way of derogation from (1), where the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up more than five *months* before the date at which the winding up will start, the *authorised fund manager* must submit the information to the *FSA* at the latest three *months* before the day the winding up will start.

[**Note:** article 20(1) first sentence and article 20(2) of the *UCITS implementing Directive No 2*]

Application for approval by a feeder UCITS where a master UCITS merges or divides

- 11.6.5 R Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that the *master UCITS* is to merge with another *UCITS scheme* or *EEA UCITS scheme* or divide into two or more such *schemes*, it must submit to the *FSA* the following:
- (1) where the *authorised fund manager* of the *feeder UCITS* intends it to continue to be a *feeder UCITS* of the same *master UCITS*:
 - (a) its application under section 283A of the *Act*, for approval;
 - (b) where applicable, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the scheme*; and
 - (c) where applicable, the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*;
 - (2) where the *authorised fund manager* of the *feeder UCITS* intends it to become a *feeder UCITS* of another *master UCITS* resulting from the proposed merger or division of the *master UCITS*, or intends the *feeder UCITS* to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS* not resulting from the merger or division:
 - (a) its application under section 283A of the *Act* for approval of that investment;
 - (b) where applicable, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the scheme*;
 - (c) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*;
 - (d) the other *documents* required in accordance with *COLL 11.2.2R*;
 - (3) where the *authorised fund manager* of the *feeder UCITS* intends it to

convert into a *UCITS scheme* that is not a *feeder UCITS*:

- (a) its application for approval under section 252A of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to the *instrument constituting the scheme*; and
 - (b) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*; and
- (4) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[**Note:** article 22(1) of the *UCITS implementing Directive No 2*]

Interpretation of COLL 11.6.5R

- 11.6.6 R (1) For the purposes of *COLL 11.6.5R(1)*, a *feeder UCITS* will be considered as continuing to be a *feeder UCITS* of the same *master UCITS* where:
- (a) the *master UCITS* is the *receiving UCITS* in a proposed *UCITS merger*; or
 - (b) the *master UCITS* is to continue materially unchanged as one of the resulting *UCITS schemes* or *EEA UCITS schemes* in a proposed division.
- (2) For the purposes of *COLL 11.6.5R(2)*, a *feeder UCITS* will be considered as becoming a *feeder UCITS* of another *master UCITS* resulting from the merger or division of the *master UCITS* where:
- (a) the *master UCITS* is the *merging UCITS* and, as a result of the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
 - (b) the *feeder UCITS* as a result of the division becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* that is materially different to the *master UCITS*.

[**Note:** article 22(2) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: merger or division of a master UCITS

- 11.6.7 R (1) The information in *COLL 11.6.5R* must be submitted to the *FSA* no later than one *month* after the date on which the *authorised fund manager* of the *feeder UCITS* has received the information of the planned merger or division in accordance with regulation 13(6) of the *UCITS Regulations 2011*.

- (2) By way of derogation from (1), where the *master UCITS* provides the information referred to in, or comparable with, *COLL 7.7.10R* (Information to be given to unitholders) to the *authorised fund manager* of the *feeder UCITS* more than four *months* before the proposed effective date of the merger or division of the *master UCITS*, the *authorised fund manager* must submit the information to the *FSA* at least three *months* before the proposed effective date.

[**Note:** article 22(1) first sentence and article 22(3) of the *UCITS implementing Directive No 2*]

Repurchase or redemption of units in a master UCITS

- 11.6.8 G Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FSA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

- 11.6.9 R (1) Where:

- (a) the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under *COLL 11.6.5R(2)* and (3); and
- (b) does not receive the necessary approvals from the *FSA* by the *business day* preceding the last *day* on which the *authorised fund manager* of the *feeder UCITS* can request repurchase or *redemption* of its *units* in the *master UCITS*;

the *authorised fund manager* of the *feeder UCITS* must exercise the right to repurchase or *redeem* its *units* in the *master UCITS* under regulation 12(4) of the *UCITS Regulations 2011*.

- (2) The *authorised fund manager* of the *feeder UCITS* must also exercise the right in (1) to ensure that the right of its own *unitholders* to request repurchase or *redemption* in the *feeder UCITS* in accordance with *COLL 4.8.3R(1)(d)* (Information to be provided to unitholders) is not affected.
- (3) Before exercising the right in (1), the *authorised fund manager* of the *feeder UCITS* must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own *unitholders*.
- (4) Where the *authorised fund manager* of the *feeder UCITS* requests repurchase or *redemption* in accordance with (1), it must receive one of the following:
- (a) the repurchase or *redemption* proceeds in cash; or
- (b) some or all of the repurchase or *redemption* proceeds as a

transfer in kind, where the *authorised fund manager* of the *feeder UCITS* so wishes and where its *instrument constituting the scheme* and the *master-feeder agreement* provide for it.

- (5) Where (4)(b) applies, the *authorised fund manager* of the *feeder UCITS* may realise any part of the transferred assets for cash at any time.

[**Note:** articles 23(4) and 23(5) of the *UCITS implementing Directive No 2*]

Conditions on reinvestment of cash

11.6.10 R Where:

- (1) the *FSA* approves an application under sections 283A (Master-feeder structures) or 252A (Proposal to convert to a non-feeder *UCITS*) of the *Act* or regulation 22A of the *OEIC Regulations* that arises as a result of the winding-up, merger or division of the *master UCITS* (other than an application pursuant to *COLL 11.6.5R(1)*); and
- (2) the *authorised fund manager* of the *feeder UCITS* holds or receives cash in accordance with *COLL 11.6.9R(4)* or as a result of a winding-up;

the *authorised fund manager* may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the *feeder UCITS* invests in *units* of the *master UCITS* in accordance with *COLL 11.3.2R(3)* (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[**Note:** article 23(6) of the *UCITS implementing Directive No 2*]

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

Requirements following approval by the FSA

11.6.12 R Where the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under *COLL 11.6.3R(1)*, *COLL 11.6.3R(2)*, *COLL 11.6.5R(1)*, *COLL 11.6.5R(2)* or *COLL 11.6.5R(3)* and has received written notice of any required approvals from the *FSA*, it must:

- (1) inform the *master UCITS* of those approvals; and
- (2) in the case of the required approvals received in respect of *documents* submitted under *COLL 11.6.3R(1)* and *COLL 11.6.5R(2)*, take the necessary measures to comply with the requirements of *COLL 4.8.3R* as soon as possible.

[**Note:** articles 21(2), 21(3), 23(2) and 23(3) of the *UCITS implementing Directive No 2*]

Notification by feeder UCITS of intention to be wound up

11.6.13 R Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FSA* under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* that it intends to wind up the *scheme*, it must inform:

- (1) the *unitholders* of the *feeder UCITS*; and
- (2) where notice is given under *COLL 11.6.5R(4)* (Application for approval by a feeder UCITS where a master UCITS merges or divides), the *authorised fund manager* of the *master UCITS*;

of its intention without undue delay.

[**Note:** articles 20(3) and 22(4) of the *UCITS implementing Directive No 2*]

11 Annex 1R Contents of the standard master-feeder agreement

This table belongs to the *rule* on the conclusion and prescribed content of a standard *master-feeder agreement* (*COLL 11.3.2R(1)*).

(1)	Provisions related to access to information by a <i>master UCITS</i> and a <i>feeder UCITS</i> :	
(a)	how and when the <i>master UCITS</i> provides the <i>feeder UCITS</i> with a copy of its <i>instrument constituting the scheme</i> , <i>prospectus</i> and <i>key investor information</i> or any amendment of them;	
(b)	how and when the <i>master UCITS</i> informs the <i>feeder UCITS</i> of a delegation of investment management and risk management functions to third parties in accordance with <i>COLL 6.6.15AR</i> ;	
(c)	where applicable, how and when the <i>master UCITS</i> provides the <i>feeder UCITS</i> with internal operational documents, such as its risk management process and its compliance reports;	
(d)	what details of breaches by the <i>master UCITS</i> of;	
	(i)	the law;
	(ii)	the <i>instrument constituting the scheme</i> ; and
	(iii)	the <i>master-feeder agreement</i> ;
	must be notified to the <i>feeder UCITS</i> and the manner and timing thereof;	
(e)	where a <i>feeder UCITS</i> uses <i>derivatives</i> for hedging purposes, how and when the <i>master UCITS</i> will provide the <i>feeder UCITS</i> with information	

	about its actual exposure to <i>derivatives</i> to enable the <i>feeder UCITS</i> to calculate its own global exposure as envisaged by <i>COLL 5.8.4R</i> (Exposure to derivatives); and
(f)	a statement that the <i>master UCITS</i> must inform the <i>feeder UCITS</i> of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the <i>master UCITS</i> makes those other information-sharing arrangements available to the <i>feeder UCITS</i> .
[Note: article 8 of the <i>UCITS implementing Directive No 2</i>]	
(2)	Provisions related to the basis of investment and divestment by the <i>feeder UCITS</i> :
(a)	a statement of which <i>classes of units</i> of the <i>master UCITS</i> are available for investment by the <i>feeder UCITS</i> ;
(b)	the charges and expenses to be borne by the <i>feeder UCITS</i> and details of any rebate or retrocession of charges or expenses by the <i>master UCITS</i> ; and
(c)	where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the <i>feeder UCITS</i> to the <i>master UCITS</i> .
[Note: article 9 of the <i>UCITS implementing Directive No 2</i>]	
(3)	Provisions related to standard dealing arrangements:
(a)	co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of <i>units</i> ;
(b)	co-ordination of transmission of dealing orders by the <i>feeder UCITS</i> , including, where applicable, the role of transfer agents or any other third party;
(c)	where applicable, any arrangements necessary to take account of the fact that the <i>units</i> of the <i>master UCITS</i> or the <i>feeder UCITS</i> are listed or traded on a secondary market;
(d)	where necessary, appropriate measures to ensure compliance with the requirements in <i>COLL 11.3.6R</i> (Avoidance of opportunities for market timing);
(e)	where the <i>units</i> of the <i>feeder UCITS</i> and the <i>master UCITS</i> are denominated in different currencies, the basis for conversion of dealing orders;
(f)	settlement cycles and payment details for purchases or subscriptions and repurchases or <i>redemptions</i> of <i>units</i> of the <i>master UCITS</i> including, where agreed between the parties, the terms on which the <i>master UCITS</i>

	may settle <i>redemption</i> requests by a transfer of assets in kind to the <i>feeder UCITS</i> , notably where a <i>master UCITS</i> is wound up, merges with another <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or divides into two or more such <i>schemes</i> ;
(g)	procedures to ensure enquiries and complaints from <i>unitholders</i> are handled appropriately; and
(h)	where the <i>instrument constituting the scheme</i> and <i>prospectus</i> of the <i>master UCITS</i> give it certain rights or powers in relation to <i>unitholders</i> , and the <i>master UCITS</i> chooses to limit or forego the exercise of all or any such rights and powers in relation to the <i>feeder UCITS</i> , a statement of the terms on which it does so.
[Note: article 10 of the <i>UCITS implementing Directive No 2</i>]	
(4)	Provisions related to events affecting dealing arrangements:
(a)	the manner and timing of a notification by either the <i>master UCITS</i> or the <i>feeder UCITS</i> of the temporary suspension and resumption of repurchase, <i>redemption</i> , purchase or subscription of its <i>units</i> ; and
(b)	the arrangements for notifying and resolving pricing errors in the <i>master UCITS</i> .
[Note: article 11 of the <i>UCITS implementing Directive No 2</i>]	
(5)	Provisions related to the standard arrangements for the audit report:
(a)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have the same accounting years, the co-ordination of the production of their periodic reports; and
(b)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have different accounting years, arrangements for the <i>feeder UCITS</i> to obtain any necessary information from the <i>master UCITS</i> to enable it to produce its periodic reports on time and which ensure that the auditor of the <i>master UCITS</i> is in a position to produce an ad hoc report on the closing date of the accounting year of the <i>feeder UCITS</i> in accordance with <i>COLL 11.5.4R</i> (Preparation of the audit report).
[Note: article 12 of the <i>UCITS implementing Directive No 2</i>]	
(6)	Provisions related to changes to the standing arrangements:
How and when notice is to be given:	
(a)	by the <i>master UCITS</i> of proposed and effective amendments to its <i>instrument constituting the scheme</i> , <i>prospectus</i> and <i>key investor information</i> , if these details differ from the standard arrangements for notification of <i>unitholders</i> laid down in the

		<i>instrument constituting the scheme or prospectus of the master UCITS;</i>
	(b)	by the <i>master UCITS</i> of a planned or proposed winding up, <i>merger</i> or division;
	(c)	by either the <i>feeder UCITS</i> or the <i>master UCITS</i> that it has ceased or will cease to meet the qualifying conditions to be a <i>feeder UCITS</i> or a <i>master UCITS</i> respectively;
	(d)	by either the <i>feeder UCITS</i> or the <i>master UCITS</i> that it intends to replace its <i>management company</i> , its <i>depository</i> , its auditor or any third party which is mandated to carry out investment management or risk management functions; and
	(e)	by the <i>master UCITS</i> of other changes to standing arrangements that it undertakes to provide.
[Note: article 13 of the <i>UCITS implementing Directive No 2</i>]		

11 Annex 2R Contents of the internal conduct of business rules

This table belongs to the *rule* on the conclusion and prescribed content of the internal conduct of business rules (*COLL 11.3.2R(2)*).

(1)	Provisions related to conflicts of interest	
	(a)	The internal conduct of business rules referred to in <i>COLL 11.3.2R(2)</i> must include appropriate measures to mitigate conflicts of interest that may arise between:
		(i) the <i>feeder UCITS</i> and the <i>master UCITS</i> ; or
		(ii) the <i>feeder UCITS</i> and other <i>unitholders</i> of the <i>master UCITS</i> ;
		to the extent that these are not sufficiently addressed by the measures applied by the <i>management company</i> in order to meet the requirements of the provisions listed in (b).
	(b)	The provisions referred to in (a) are:
		(i) <i>SYSC 10.1.4R</i> (Types of conflicts);
		(ii) <i>SYSC 10.1.6R</i> (Record of conflicts);
		(iii) <i>SYSC 10.1.10R</i> (Conflicts policy);

	(iv)	SYSC 10.1.11R (Contents of policy);
	(v)	SYSC 10.1.17R (Additional requirements for a management company);
	(vi)	SYSC 10.1.19R (Structure and organisation of a management company);
	(vii)	SYSC 10.1.20R (Avoidance of conflicts of interest for a management company);
	(viii)	SYSC 10.1.21R (Disclosure of conflicts for a management company); and
	(ix)	COLL 6.6A.6R (Strategies for the exercise of voting rights);
		or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the <i>UCITS Directive</i> and Chapter III of the <i>UCITS implementing Directive</i> .
[Note: article 15 of the <i>UCITS implementing Directive No 2</i>]		
(2)	Provisions related to the basis of investment and divestment by the <i>feeder UCITS</i> :	
	(a)	a statement of which <i>classes of units</i> of the <i>master UCITS</i> are available for investment by the <i>feeder UCITS</i> ;
	(b)	the charges and expenses to be borne by the <i>feeder UCITS</i> and details of any rebate or retrocession of charges or expenses by the <i>master UCITS</i> ; and
	(c)	where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the <i>feeder UCITS</i> to the <i>master UCITS</i> .
[Note: article 16 of the <i>UCITS implementing Directive No 2</i>]		
(3)	Provisions related to standard dealing arrangements:	
	(a)	co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of <i>units</i> ;
	(b)	co-ordination of transmission of dealing orders by the <i>feeder UCITS</i> , including, where applicable, the role of transfer agents or any other third party;
	(c)	where applicable, any arrangements necessary to take account of the fact that <i>units</i> of the <i>master UCITS</i> or the <i>feeder UCITS</i> are listed or traded on a secondary market;

(d)	where necessary, appropriate measures to ensure compliance with the requirements in <i>COLL</i> 11.3.6R (Avoidance of opportunities for market timing);
(e)	where the <i>units</i> of the <i>feeder UCITS</i> and the <i>master UCITS</i> are denominated in different currencies, the basis for conversion of dealing orders;
(f)	settlement cycles and payment details for purchases or subscriptions and repurchases or <i>redemptions</i> of <i>units</i> of the <i>master UCITS</i> including, where agreed between the parties, the terms on which the <i>master UCITS</i> may settle <i>redemption</i> requests by a transfer of assets in kind to the <i>feeder UCITS</i> , notably where a <i>master UCITS</i> is wound up, merges with another <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or divides into two or more such <i>schemes</i> ; and
(g)	where the <i>instrument constituting the scheme</i> and <i>prospectus</i> of the <i>master UCITS</i> give it certain rights or powers in relation to <i>unitholders</i> , and the <i>master UCITS</i> chooses to limit or forego the exercise of all or any such rights and powers in relation to the <i>feeder UCITS</i> , a statement of the terms on which it does so.
[Note: article 17 of the <i>UCITS implementing Directive No 2</i>]	
(4)	Provisions related to events affecting dealing arrangements:
(a)	the manner and timing of notification by either the <i>master UCITS</i> or the <i>feeder UCITS</i> of the temporary suspension and resumption of repurchase, <i>redemption</i> , purchase or subscription of its <i>units</i> ; and
(b)	the arrangements for notifying and resolving pricing errors in the <i>master UCITS</i> .
[Note: article 18 of the <i>UCITS implementing Directive No 2</i>]	
(5)	Provisions related to the standard arrangements for the audit report:
(a)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have the same accounting years, the co-ordination of the production of their periodic reports; and
(b)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have different accounting years, arrangements for the <i>feeder UCITS</i> to obtain any necessary information from the <i>master UCITS</i> to enable it to produce its periodic reports on time and which ensure that the auditor of the <i>master UCITS</i> is in a position to produce an ad hoc report on the closing date of the accounting year of the <i>feeder UCITS</i> in accordance with <i>COLL</i> 11.5.4R (Preparation of the audit report).
[Note: article 19 of the <i>UCITS implementing Directive No 2</i>]	

12 Management company and product passports under the UCITS Directive

12.1 Introduction

Application

- 12.1.1 R (1) *COLL* 12.1 (Introduction) – *COLL* 12.3 (EEA UCITS management companies) apply to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
 - (b) (i) an *EEA UCITS management company* that acts as:
 - (A) the *manager* of an *AUT*; or
 - (B) the *ACD* of an *ICVC*;
 - (ii) any other director of an *ICVC*; and
 - (iii) an *ICVC*;
- that is a *UCITS scheme*.
- (2) *COLL* 12.4 (UCITS product passport) applies in accordance with *COLL* 12.4.1R (Application).

Purpose

- 12.1.2 G (1) This chapter contains *rules* and *guidance* relating to the operation of the *management company* passport under the *UCITS Directive* and explains how the passporting regime applies to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
 - (b) an *EEA UCITS management company* that acts as the *manager* of an *AUT* or the *ACD* of an *ICVC* that is a *UCITS scheme*;
- whether from a *branch* it establishes in an *EEA State* other than its *Home State* or under the freedom to provide *cross border services*.
- (2) *COLL* 12.4 (UCITS product passport) contains *rules* and *guidance* relating to the operation of the product passport under the *UCITS Directive* under which a *UCITS scheme* established in the *United Kingdom* may passport into and be marketed in another *EEA State* (the *Host State*).
- 12.1.3 G Where an *authorised fund manager* wishes to market the *units* of a *UCITS scheme* it operates in a *Host State*, without establishing a *branch* or pursuing

any other activities in that State, a *management company* passport is not required for those *marketing* activities. A *UCITS marketing notification* should be made for the relevant *UCITS scheme* (see COLL 12.4 (UCITS product passport) in order to access the market of the *Host State*. The *marketing* must be carried on in conformity with the laws and regulations of that *Host State* implementing Chapter XI of the *UCITS Directive*.

[**Note:** article 16(1) second paragraph of the *UCITS Directive*]

12.2 UK UCITS management companies

Application

- 12.2.1 R This section applies to a *UK UCITS management company* that operates an *EEA UCITS scheme* by establishing a *branch* in another *EEA State* or under the freedom to provide *cross-border services*.

References in COLL to authorised fund manager

- 12.2.2 R Where this section refers to *rules* in any other part of this sourcebook, references in those *rules* and any relevant *guidance* to an *authorised fund manager*, *AFM* or *operator* of a *UCITS scheme* are to be interpreted as if they are referring to a *UK UCITS management company* of the *EEA UCITS scheme*.

Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

- 12.2.3 R A *UK UCITS management company* that operates an *EEA UCITS scheme* must in relation to that activity comply with the *rules* which relate to:
- (1) the organisation of the *management company*, including delegation arrangements;
 - (2) risk-management procedures;
 - (3) prudential rules and supervision;
 - (4) operating conditions; and
 - (5) reporting requirements.

[**Note:** article 19(1) of the *UCITS Directive*]

Arrangements and organisational decisions

- 12.2.4 R A *UK UCITS management company* that operates an *EEA UCITS scheme* must decide and be responsible for adopting and implementing all the arrangements and organisational decisions that are necessary to ensure compliance with rules drawn up by the *EEA State* in which that *scheme* is established, in implementation of its obligations under articles 19(3) and 19(4) of the *UCITS*

Directive.

[**Note:** article 19(6) of the *UCITS Directive*]

- 12.2.5 G The *FSA's* equivalent *rules* under articles 19(3) and 19(4) of the Directive are set out in *COLL* 12.3.5R (*COLL* fund rules under the management company passport: the fund application rules) and *COLL* 6.6.3R (Functions of the authorised fund manager).

Rules of conduct: UK UCITS management companies operating in another Member State

- 12.2.6 G (1) Each *EEA State*, including the *United Kingdom*, is required to implement article 14 of the *UCITS Directive* by drawing up rules of conduct which *management companies* authorised in that State must observe at all times, except as explained in (3).
- (2) *UK UCITS management companies* operating an *EEA UCITS scheme* under the freedom to provide *cross border services* (otherwise than by establishing a *branch* in that State) are advised that, as provided for elsewhere in the *Handbook*, they are required to comply with the following *rules* and *guidance* in relation to such business, as follows:
- (a) *COLL* 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
 - (b) *COLL* 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
 - (c) *COLL* 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
 - (d) *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of *SYSC* 1 Annex 1 (Detailed application of *SYSC*); and
 - (e) *COBS*, to the extent indicated at paragraph 9.1 of Part 3 of *COBS* 1 Annex 1 (Application).
- (3) Rules of conduct drawn up by a *Host State* under article 14 of the *UCITS Directive* are for *branch* operations reserved to that State under article 17(4) of that Directive. A *UK UCITS management company* operating an *EEA UCITS scheme* from a *branch* in an *EEA State* other than the *United Kingdom*, should be aware that it will be expected to comply with the relevant requirements of its *Host State regulator* that correspond to the *rules* referred to at (2)(a) to (c) and (e). Further *guidance* on the *COBS* position may be found at paragraph 9 of Part 3 of *COBS* 1 Annex 1 (Application). As explained at paragraph 2.16AR of Part 2 of *SYSC* 1 Annex 1 (Detailed application of *SYSC*), *SYSC*, to the

extent indicated in column A+ (Application to a management company) of Part 3 of SYSC 1 Annex 1, applies to a *UK UCITS management company* in relation to *passport activities* carried on by it from a *branch* in another *EEA State*, reflecting that responsibility for such matters is shared between the *management company's Home* and *Host State regulators*.

[**Note:** articles 14, 17(4) and 18(3) of the *UCITS Directive*]

Notification to the UCITS Home State regulator

- 12.2.7 G (1) A *UK UCITS management company* which applies to operate an *EEA UCITS scheme* in another *EEA State* is advised that it must comply with the requirements of the *Host State regulator* regarding provision to them of the following *documents*:
- (a) the written agreement it has entered into with the *depository* of the *EEA UCITS scheme*, as referred to in articles 23 and 33 of the *UCITS Directive*; and
 - (b) information on delegation arrangements (if any), regarding functions of investment management and administration which are to be delegated to a third party.
- (2) If the *UCITS management company* already manages other *UCITS* of the same type in the *EEA State* referred to in (1), reference to the *documents* already provided should be sufficient.
- (3) Any subsequent material modifications of the *documents* referred to in (1) must be notified by the *UK UCITS management company* to the *Host State regulator*.

[**Note:** article 20(1) and 20(4) of the *UCITS Directive*]

Requirement to make information available to the public or the competent authority of the scheme's Home Member State

- 12.2.8 G A *UK UCITS management company* that operates an *EEA UCITS scheme* is advised that in accordance with the requirements of the *Host State regulator* it must establish appropriate procedures and arrangements to make information available at the request of the public or that regulator.

12.3 EEA UCITS management companies

Application

- 12.3.1 R This section applies to an *EEA UCITS management company* that provides *collective portfolio management* services in the *United Kingdom* by acting as the *manager* of an *AUT* or the *ACD* of an *ICVC* which is a *UCITS scheme*, either by establishing a *branch* or under the freedom to provide *cross border*

services.

Purpose

- 12.3.2 G (1) An *EEA UCITS management company* may be the *manager* of an *AUT*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* (see *SUP 13A* (Qualifying for authorisation under the Act)).
- (2) An *EEA UCITS management company* that acts as the *manager* of an *AUT*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* may conduct its business from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services* (without establishing a *branch* in the *United Kingdom*).
- (3) The *Glossary* definition of an “*authorised fund manager*” includes an *EEA UCITS management company*.
- (4) This section provides for the application of the *FSA Handbook* to such a *firm*.

[**Note:** article 16(1) of the *UCITS Directive*]

Further reading on the UCITS management company passport regime

- 12.3.3 G A summary of how the passport for *UCITS management companies* established by the *UCITS Directive* is intended to operate, including the processes for applying for the necessary approvals and describing the regulatory split of responsibilities between the *competent authorities* of the relevant *Home State* and *Host State*, is to be found in *COLLG*.

Provision of documentation to the FSA: EEA UCITS management companies

- 12.3.4 R (1) An *EEA UCITS management company* which applies to manage a *UCITS scheme* under paragraph 15A(1) of Schedule 3 to the *Act* must provide the *FSA* with the following *documents*:
- (a) the written agreement that has been entered into with the *depository* of the *scheme*, as referred to in *COLL 6.6.4R(6)* (General duties of the depository);
- (b) information on any delegation arrangements it has made regarding the functions of investment management and administration, as referred to in Annex II of the *UCITS Directive*; and
- (c) the form required under *SUP 13A Annex 3R* (EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom).
- (2) If the *EEA UCITS management company* already manages other *UCITS schemes* of the same type in the *United Kingdom* and under the same arrangements, reference to the *documents* already provided to the *FSA* is

sufficient compliance with (1)(a) and (b).

- (3) If any subsequent material modification is made to any of the *documents* referred to in (1)(a) and (b), the *EEA UCITS management company* must promptly notify the *FSA* of those changes.

[**Note:** article 20(1) first and second paragraphs and article 20(4) of the *UCITS Directive*]

COLL fund rules under the management company passport: the fund application rules

12.3.5 R An *EEA UCITS management company* that manages a *UCITS scheme* must comply with the *rules* of the *Handbook* which relate to the constitution and functioning of the *UCITS scheme* (the *fund application rules*), as follows:

- (1) the setting up and authorisation of the *UCITS scheme* (*COLL 1* (Introduction), *COLL 2* (Authorised fund applications), *COLL 3* (Constitution), *COLL 6.5* (Appointment and replacement of the authorised fund manager and the depositary), *COLL 6.6* (Powers and duties of the scheme, the authorised fund manager and the depositary) (unless disapplied), *COLL 6.7* (Payments), *COLL 6.9.1R* (Application) to *COLL 6.9.8G* (Undesirable or misleading names: umbrellas – guidance) and *COLL 6.9.11R* (Notification to the FSA in its role as registrar of ICVCs));
- (2) the *issue* and *redemption of units* (*COLL 6.1* (Introduction and application), *COLL 6.2* (Dealing) (with the exception of *COLL 6.2.19R* (Limited redemption) and *COLL 6.2.20G* (Limited redemption: guidance)) and *COLL 7.2* (Suspension and restart of dealings));
- (3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales (*COLL 5.1* (Introduction) to *COLL 5.5* (Cash, borrowing, lending and other provisions), *COLL 5.8* (Investment powers and borrowing limits for feeder UCITS), *COLL 6.12* (Risk management policy and risk measurement) and *COLL 11* (Master-feeder arrangements under the UCITS Directive));
- (4) the value of the *scheme property* and the accounting of the *UCITS scheme* (*COLL 6.1* (Introduction and application) and *COLL 6.3* (Valuation and pricing) (unless disapplied));
- (5) the calculation of the *issue* or *redemption price*, and errors in the net asset value and related investor compensation (*COLL 6.1* (Introduction and application) and *COLL 6.3* (Valuation and pricing));
- (6) the distribution or reinvestment of the *income property* (*COLL 6.8* (Income: accounting, allocation and distribution));
- (7) the disclosure and reporting requirements of the *UCITS scheme*, including the *prospectus*, *key investor information document* and

periodic reports (*COLL* 4.1 (Introduction), *COLL* 4.2 (Pre-sale notifications), *COLL* 4.5 (Reports and accounts) and *COLL* 4.7 (Key investor information and marketing communications));

- (8) the arrangements made for *marketing* (*COBS* 4 (Communicating with clients, including financial promotions), *COBS* 14 (Providing product information to clients) and *COLL* 4.7 (Key investor information and marketing communications));
- (9) the relationship with *unitholders* (*COLL* 4.1 (Introduction), *COLL* 4.3 (Approvals and notifications) and *COLL* 4.4 (Meetings of unitholders and service of notices));
- (10) the merging, restructuring, winding up and liquidation of the *UCITS scheme* (*COLL* 7.1 (Introduction) and *COLL* 7.3 (Winding up a solvent ICVC and terminating a sub-fund of an ICVC) to *COLL* 7.7 (UCITS mergers) (including *COLL* 7.6.2R(3) to (6)));
- (11) where applicable, the content of the *register* (*COLL* 6.4 (Title and registers));
- (12) the exercise of *unitholders'* voting rights and other *unitholders'* rights in relation to (1) to (11) (including *COLL* 4.1 (Introduction), *COLL* 4.3 (Approvals and notifications), *COLL* 4.4 (Meetings of unitholders), Dispute resolution: Complaints sourcebook) (*DISP* - see *DISP* 1 Annex 2G for a summary of the relevant requirements that apply) and the Compensation sourcebook (*COMP*)); and
- (13) the application and periodic fees of the *UCITS scheme* (*FEES*)).

[**Note:** articles 16(3) and 19(3) of the *UCITS Directive*]

Requirement to make information available to the public or the FSA

- 12.3.6 R (1) An *EEA UCITS management company* that manages a *UCITS scheme* must establish appropriate procedures and arrangements to make information available at the request of the public or the *FSA*.
- (2) The *EEA UCITS management company* must ensure that the procedures and arrangements it establishes in accordance with (1), enable the *FSA* to obtain any information it requests directly from the *management company*.

[**Note:** article 15 second paragraph and article 21(2) third paragraph, of the *UCITS Directive*]

EEA UCITS management companies: compliance with FSA rules

- 12.3.7 G An *EEA UCITS management company* that operates a *UCITS scheme* is advised that in particular it needs to comply with:

- (1) *COLL 6.6.3R* (Functions of the authorised fund manager) requiring it to fulfil the obligations placed on it by the *instrument constituting the scheme* and the *prospectus* of that *scheme*;
- (2) Dispute resolution: Complaints sourcebook (*DISP* - see *DISP 1 Annex 2G* for a summary of the relevant requirements that apply, which include the *complaints handling rules* (under which the *management company* is required to be subject to the *Compulsory Jurisdiction* of the *UK's Financial Ombudsman Service*), as set out in *DISP 2* and *3*, but note that the application of many of the requirements in *DISP* differs depending on whether the *collective portfolio management* services are being provided from a *branch* in the *UK* or under the freedom to provide *cross border services*);
- (3) and to the extent applicable, the Compensation sourcebook (*COMP*) requiring it to participate in the *UK's Financial Services Compensation Scheme* which provides compensation cover where valid claims relating to a *UCITS scheme* arise from the default of a *management company*.

[**Note:** article 16(3), 19(4) and 19(6) of the *UCITS Directive*]

EEA UCITS management companies: conduct of business rules

- 12.3.8 G (1) In addition to the requirements of this section, an *EEA UCITS management company* that provides *collective portfolio management* services from a *branch* in the *United Kingdom* must comply with the following *rules* that implement the requirements of article 14(1) of the *UCITS Directive*:
- (a) *COLL 6.6A.2R* (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
 - (b) *COLL 6.6A.4R* (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
 - (c) *COLL 6.6A.5R* (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
 - (d) *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of *SYSC 1 Annex 1* (Detailed application of *SYSC*); and
 - (e) *COBS*, to the extent indicated at paragraph 9.1 of Part 3 of *COBS 1 Annex 1* (Application).
- (2) The effect of article 18(3) of the *UCITS Directive* is that an *EEA UCITS management company* managing a *UCITS scheme* under the freedom to provide *cross border services* without establishing a *branch* in the *United Kingdom*, has to comply with the relevant conduct of business

rules drawn up by its *Home State regulator* that implement the requirements of article 14(1) of the Directive. So the *rules* set out at (1) do not apply to such a *management company*. However, such *management companies* must comply in all respects with the *fund application rules* referred to in COLL 12.3.5R.

[**Note:** articles 14, 16(3), 17(4), 18(3) and article 19(3) of the *UCITS Directive*]

12.4 UCITS product passport

Application

12.4.1 R (1) This section applies to:

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

which is a *UCITS scheme* whose *units* may be marketed in another *EEA State* (the *Host State*).

- (2) The *marketing of units* of a *UCITS scheme* in the *Host State* may not commence until the *FSA* has, in accordance with paragraph 20B(5) (Notice of intention to market) of Schedule 3 to the *Act*, notified the *authorised fund manager*, in response to the application of that *firm*, that it has transmitted a *UCITS marketing notification* to the appropriate *Host State regulator*.

12.4.2 G The effect of article 58(4) (b) of the *UCITS Directive* is that a *UCITS scheme* that is a *master UCITS* which only has one or more *feeder UCITS* in another *EEA State* and therefore does not raise capital directly from the public in that *EEA State* will not thereby be exercising its right to market its *units* in that *Host State* in accordance with Chapter XI of the *UCITS Directive*.

[**Note:** article 58(4)(b) of the *UCITS Directive*]

Availability of facilities

12.4.3 G The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* should be aware that it may be required by the laws, regulations and administrative provisions of the *Host State regulator* to maintain facilities in that State, including for making payments to *unitholders*, repurchasing or redeeming *units* and making available the information which is required to be provided in relation to the *scheme*.

[**Note:** article 92 of the *UCITS Directive*]

Keeping fund documentation up to date and notification of changes

- 12.4.4 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in the *Host State* must ensure that:
- (a) its *instrument constituting the scheme*, its *prospectus* and, where appropriate, its latest annual report and any subsequent half-yearly report; and
 - (b) its *key investor information document*;
- together with their translations (wherever necessary), are kept up to date.
- (2) The *authorised fund manager* must notify any amendments to the *documents* referred to in (1) to each relevant *Host State regulator* and must indicate to them where those *documents* can be obtained electronically.
- (3) In the event of a change in the information regarding the arrangements made for *marketing*, communicated in the notification letter submitted to the *FSA* under paragraph 20B of Schedule 3 to the *Act*, or a change regarding the *classes* of *units* to be marketed, the *authorised fund manager* must give written notice of the change to each relevant *Host State regulator* before implementing the change.
- (4) For the purposes of (2) and (3), the *authorised fund manager* may give written notice of the change by sending an e-mail to the e-mail address maintained by each relevant *Host State regulator*.
- (5) The e-mail referred to in (4) notifying the update or amendment may:
- (a) describe the update or the amendment that has been made; or
 - (b) provide the new version of the *document* as an attachment, in which case it must be provided in a commonly used electronic format.

[**Note:** articles 93(2), 93(7) second and third sentences and 93(8) of the *UCITS Directive* and article 32(2) and article 32(3) of the *UCITS implementing Directive No 2*]

Provision of information and documents

- 12.4.5 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that investors within the territory of that *Host State* are provided with all the information and *documents* which it is required by the *Handbook* to provide to investors in the *United Kingdom*.
- (2) The information and *documents* referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or

administrative provisions of the *Host State* and in compliance with the following provisions:

- (a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by its *Host State regulator*;
 - (b) information or *documents* other than the *key investor information document* (including the *prospectus*, the *instrument constituting the scheme* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language approved by its *Host State regulator*, or provided in a language customary in the sphere of international finance; and
 - (c) accurate translations of information or *documents* under (a) or (b) must be produced under the responsibility of the *authorised fund manager*.
- (3) The requirements in this *rule* also apply to any changes to the information or *documents* referred to in (1) and (2).

[**Note:** articles 94(1) and 94(2) of the *UCITS Directive*]

- 12.4.6 G The frequency of the publication of the *issue, sale, cancellation, repurchase or redemption prices* of *units* of the *UCITS scheme* when they are marketed in another *EEA State* is governed by *COLL 6.3.11R* (Publication of prices).

[**Note:** article 94(3) of the *UCITS Directive*]

Reference to the scheme's legal form

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

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

UCITS *Host State's* access to documents and updates of documents

- 12.4.8 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that an electronic copy of each *document* referred to in *COLL 12.4.4R(1)* is made available on:
- (a) the website of the *UCITS scheme* or the *authorised fund manager*;
or
 - (b) another website designated by the *authorised fund manager* in the notification letter submitted to the *FSA* under paragraph 20B of

Schedule 3 to the *Act* or any updates to it.

- (2) Any *document* that is made available on a website referred to in (1) must be provided in an electronic format in common use.
- (3) The *authorised fund manager* of the *UCITS scheme* must ensure that each relevant *Host State regulator* has access to the website referred to in (1).

[**Note:** article 31 of the *UCITS implementing Directive No 2*]

Insert the following new Appendix to COLL. The text is not underlined.

Appendix 1EU: KII Regulation

COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

- (1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.
- (2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.
- (3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.
- (4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key

investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

- (5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.
- (6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid over-burdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.
- (7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company (see page 42 of this Official Journal). For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.
- (8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.

- (9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1). This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.
- (10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.
- (11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.
- (12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.
- (13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.
- (14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis

that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

- (15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.
- (16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.
- (17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26) in order to ensure the equal treatment of investors and a level playing field in financial sectors.
- (18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.
- (19) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC (OJ L 25, 29.1.2009, p. 18), has been consulted for technical advice.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1

Subject matter

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS it manages.
2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC.

Article 3

Principles regarding the key investor information document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.
2. The key investor information shall be fair, clear and not misleading.
3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 13.
2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.
3. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest'.
4. The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.
5. The name of the management company shall be stated.
6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.
7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.
8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.
9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.
10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.
11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.
12. Authorisation details shall consist of the following statement:

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of MemberState] and regulated by [identity of competent authority]'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:
 - (a) presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:
 - (i) the language used is clear, succinct and comprehensible;
 - (ii) the use of jargon is avoided;
 - (iii) technical terms are avoided when everyday words can be used instead;
 - (c) focused on the key information that investors need.
2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.
3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT**SECTION 1*****Objectives and investment policy****Article 7***Specific contents of the description**

1. The description contained in the ‘Objectives and investment policy’ section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:
 - (a) the main categories of eligible financial instruments that are the object of investment;
 - (b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;
 - (c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;
 - (d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;
 - (e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:
 - (a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;
 - (b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary,

to the details on the algorithm and its workings which appear in the prospectus;

- (c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as ‘growth’, ‘value’ or ‘high dividends’;
- (d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;
- (e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;
- (f) where a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

‘Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]’.

- 3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).
- 4. The ‘Objectives and investment policy’ section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS’ investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

- 1. The ‘Risk and reward profile’ section of the key investor information document shall contain a synthetic indicator, supplemented by:
 - (a) a narrative explanation of the indicator and its main limitations;
 - (b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.
3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:
 - (a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;
 - (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;
 - (c) a statement that the lowest category does not mean a risk-free investment;
 - (d) a brief explanation as to why the UCITS is in a specific category;
 - (e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.
5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:
 - (a) credit risk, where a significant level of investment is made in debt securities;
 - (b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;
 - (c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;
 - (d) operational risks and risks related to safekeeping of assets;
 - (e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS' risk profile where

such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.
2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:
 - (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UCITS;
 - (b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;
 - (c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:
 - (a) with regard to entry and exit charges:

- (i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;
 - (ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;
- (b) with regard to ‘ongoing charges’, there shall be a statement that the ongoing charges figure is based on the last year’s expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.
2. The ‘Charges’ section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.
2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the ‘Objectives and investment policy’ section, as indicated in Article 7(2)(e).
3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS’ last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.
2. Paragraph 1 shall not apply in the following cases:
 - (a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;
 - (b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.
3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.
4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.
5. The bar chart layout shall be supplemented by statements which appear prominently and which:
 - (a) warn about its limited value as a guide to future performance;
 - (b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;
 - (c) indicate the year in which the fund came into existence;
 - (d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

*Article 16***Past performance calculation methodology**

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

*Article 17***Impact and treatment of material changes**

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown.
2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

*Article 18***Use of a benchmark alongside the past performance**

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS' past performance.
2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

*Article 19***Use of 'simulated' data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:
 - (a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;
 - (b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:
 - (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

- (ii) the feeder's characteristics do not differ materially from those of the master.
2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.
 3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.
 4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:
 - (a) the name of the depositary;
 - (b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;
 - (c) where and how to obtain other practical information, including where to find the latest prices of units;
 - (d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;
 - (e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant part of the prospectus for the UCITS.'

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.
3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21

Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.
2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.
3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.
2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.
3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.
2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

‘The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS’ annual report for each financial year will include detail on the exact charges made.’

CHAPTER IV

PARTICULAR UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.
2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:
 - (a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;
 - (b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;
 - (c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.
3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.
2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.
3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.
4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS' calculation of its own ongoing charges figure.

SECTION 4***Feeder UCITS******Article 31*****Objectives and investment policy section**

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.
2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:
 - (i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or
 - (ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32**Risk and reward profile section**

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.
2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33**Charges section**

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34**Practical information section**

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.
2. The information referred to in paragraph 1 shall include:
 - (a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);
 - (b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;
 - (c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.
2. Paragraph 1 shall not apply:
 - (a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or
 - (b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or
 - (c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features.

2. For structured UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.
3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.
4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM*Article 38***Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website**

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:
 - (a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and
 - (b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.
2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:
 - (a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;
 - (b) the investor must specifically consent to the provision of that information in that form;
 - (c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
 - (d) the information must be up to date;
 - (e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.
3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.
2. This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

For the Commission

The President

José Manuel BARROSOL

*ANNEX I***REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR**

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.
2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.
3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.
4. The category into which the UCITS falls shall be prominently indicated.
5. No colours shall be used for distinguishing between items on the scale.

*ANNEX II***PRESENTATION OF CHARGES**

The charges shall be presented in a table structured in the following way: One-off charges taken before or after you invest	
Entry charge	<input type="text"/> %
Exit charge	<input type="text"/> %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
Ongoing charge	<input type="text"/> %
Charges taken from the fund under certain specific conditions	
Performance fee	<input type="text"/> % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

— A percentage amount shall be indicated for each of these charges.

— In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

*ANNEX III***PRESENTATION OF THE PAST PERFORMANCE INFORMATION**

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;
2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;
3. the X-axis shall be set at the level of 0% performance;
4. a label shall be added to each bar indicating the return in percentage that was achieved;
5. past performance figures shall be rounded to one decimal place.

Amend the following as shown.

TP 1 Transitional Provisions

COLL TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
	Extra time provisions				
...					
17	{to follow} <u>COLL 4.5.5R (1)(a)(iv) and COLL 4.5.9R(9A)</u>	<u>R</u>	<u>An authorised fund manager need not include in the short report or long report for a UCITS scheme the figure for the synthetic risk and reward indicator that would have been disclosed in its most recent key investor information document provided that, as at the accounting reference date to which the report relates, marketing of units in the scheme is being done on the basis of a simplified prospectus meeting the requirements of the Handbook.</u>	<u>From 1 July 2011 to 31 October 2012</u>	<u>1 July 2011</u>
[Note: article 118(2) of the UCITS Directive]					

18	{to follow} Each and every rule in <i>COLL</i> that relates to <i>key investor information</i>	R	(1) This rule applies to: (a) an <i>authorised fund manager</i> of a <i>UCITS scheme</i> ; and (b) an <i>ICVC</i> which is a <i>UCITS scheme</i> and any other <i>director</i> of that <i>ICVC</i> ;	From 1 July 2011 to 30 June 2012	1 July 2011
			where the <i>authorisation order</i> for the <i>scheme</i> was made before 1 July 2011 and for this purpose, where this transitional provision is being applied in relation to an existing <i>umbrella</i> as at 1 July 2011 and an <i>authorisation order</i> is made for a new <i>sub-fund</i> of the <i>umbrella</i> after that date, this transitional provision shall also be applied to that <i>sub-fund</i> .		
			(2) A person in (1) need not comply with any rule in <i>COLL</i> that relates to <i>key investor information</i> provided it continues to produce, publish, provide, and meet all other applicable regulatory requirements in relation to, a <i>simplified prospectus</i> for the <i>UCITS scheme</i> as set out in <i>COLL</i> 4.6 (Simplified Prospectus provisions) (as it stands at 30 June 2011), and all references in any rule in <i>COLL</i> to <i>key investor information</i> should be read as references to the <i>simplified prospectus</i> .	From 1 July 2011 to 30 June 2012	1 July 2011
			(3) A person in (1) that makes use of this provision from 1 July 2011 may cease to do so in respect of the <i>UCITS scheme</i> or any <i>sub-fund</i> of		

				the <i>scheme</i> at any time before [30 June 2012], but having done so, may not, in relation to that <i>scheme</i> or <i>sub-fund</i> , make use subsequently of this provision in respect of any rules or guidance in <i>COLL</i> .		
			(4)	A person in (1) that makes use of this provision in accordance with (2) in relation to a <i>UCITS scheme</i> or <i>sub-fund</i> of the <i>scheme</i> , or that ceases to do so in accordance with (3), must do so in respect of all <i>classes of units in issue</i> in that <i>scheme</i> or <i>sub-fund</i> , whether the <i>units</i> of any such <i>class</i> were first issued before, on or after 1 July 2011.		
[Note: article 118(2) of the <i>UCITS Directive</i>]						
19	{to follow} <i>COLL</i> 4.4.12R <i>COLL</i> 4.4.13R <i>COLL</i> 7.7.19R	R		Where a <i>UCITS scheme</i> is to be the receiving <i>UCITS</i> in a proposed <i>UCITS merger</i> and no meeting of <i>unitholders</i> is required to be held under <i>COLL</i> 7.6.2R(5) and (6), the <i>authorised fund manager</i> may satisfy its duty to the <i>unitholders</i> of the receiving <i>UCITS</i> under <i>COLL</i> 7.7.19R (Method of providing merger information to unitholders) to provide the information by making it public in an appropriate manner.	From 1 July 2011 to 31 December 2013	1 July 2011
20	{to follow} <i>COLL</i> 4.4.12R <i>COLL</i> 4.4.13R <i>COLL</i> 7.7.19R	G	(1)	In determining the appropriate manner of making the information public, the <i>authorised fund manager</i> should ensure that:	From 1 July 2011 to 31 December 2013	1 July 2011
			(a)	a <i>unitholder</i> can obtain the information at a		

					<u>reasonable cost;</u>		
				(b)	<u>the information is available at reasonable times;</u>		
				(c)	<u>publication is consistent with the manner in which the <i>authorised fund manager</i> makes other types of information about the <i>scheme</i> public, so that it is reasonably likely to come to the attention of <i>unitholders</i>.</u>		
			(2)		<u>Examples of what might be deemed appropriate include one or more of:</u>		
				(a)	<u>publication in a national newspaper;</u>		
				(b)	<u>supply through an advertised local rate or freephone telephone number;</u>		
				(c)	<u>publication on the internet; or</u>		
				(d)	<u>communication to all existing <i>unitholders</i>, before the merger has taken effect.</u>		
			(3)		<u>In addition to the methods of publication in (2), the <i>authorised fund manager</i> should consider publishing appropriate information about the merger in the next long report of the <i>scheme</i>. This might include an updated explanation of the matters set out in <i>COLL 7.7.14R(1)</i> (Specific rules regarding the content of merger information to be provided to <i>unitholders</i> of the receiving UCITS).</u>		

...

Schedule 1 Record keeping requirements

Sch 1.1G Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COLL 6.13.2R</u>	<u>Portfolio transactions relating to a UCITS</u>	<u>Full details</u>	<u>After transaction</u>	<u>5 years</u>
<u>COLL 6.13.3R</u>	<u>Subscription and redemption orders</u>	<u>Full details</u>	<u>After receipt of order</u>	<u>5 years</u>
<u>COLL 6.13.4R</u>	<u>Records referred to in COLL 6.13.2R and COLL 6.13.3R</u>	<u>Full details</u>	<u>After termination of authorisation of UCITS management company</u>	<u>Outstanding term of 5 year period</u>
...				

Schedule 2 Notification requirements

...

Sch 2.2G Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL 3.2.8R (2)</i>	Marketing of <i>UCITS</i> scheme in another <i>EEA State</i>	Details, including <i>EEA state</i> concerned	Intention to market	Immediate
...				
<i>COLL 4.2.3AR (1)(b)</i>	Copy of <i>prospectus</i> of the <i>master UCITS</i>	Full details, together with any <u>amendments</u>	<u>On publication</u>	<u>Immediately on publication</u>
...				
<i>COLL 4.5.15R (1)(b)</i>	Copies of the annual and half-yearly long reports of the <i>master UCITS</i>	Full details	<u>End of <i>annual</i> or <i>half-yearly</i> accounting period</u>	<u>Immediately on publication</u>
<i>COLL 4.7.7R(2)</i>	<i>Key investor information document</i>	Full details, together with any <u>amendments</u>	<u>On first use</u>	<u>Immediate</u>
<i>COLL 4.7.7R(3)</i>	<i>Key investor information document of the master UCITS</i>	Full details, together with any <u>amendments</u>	<u>On first use</u>	<u>Immediate</u>
...				
<i>COLL 5.2.24R (2) & COLL 5.2.24R (3)</i>	Risk management process and any material alteration to it	Methods of estimating risk, types of <i>derivative</i> , their underlying risk and any quantitative limits	Intention to use derivatives in the management of a <i>scheme</i> or any subsequent proposed material alteration to the risk	Before policy is implemented

			<u>management process</u>	
<u>COLL 6.12.3R</u>	<u>Risk management process</u>	<u>Details in COLL 6.12.2R(2)(a) and (b) and any material alterations thereof</u>	<u>On first use of process</u>	<u>On a regular basis and at least annually</u>
<u>COLL 6.12.6R(2)</u>	<u>Material change to the risk management process</u>	<u>Full details of change</u>	<u>On first use of amended process</u>	<u>Immediate</u>
...				
<u>COLL 7.7.22R</u>	<u>Confirmation of the completion of the merger transfer</u>	<u>Details of completion</u>	<u>On completion of transfer</u>	<u>Immediate</u>
...				
<u>COLL 11.3.9R</u>	<u>Identity of investing feeder UCITS</u>	<u>Full details</u>	<u>After investment</u>	<u>Immediate</u>
<u>COLL 11.4.3R</u>	<u>Notification of irregularities relating to a master UCITS</u>	<u>Full details</u>	<u>Detection</u>	<u>Immediate</u>
...				

...

Annex L

Amendments to the Regulated Covered Bonds Specialist sourcebook (RCB)

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

- 1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FSA* under the *RCB Regulations*. Those regulations enable bonds to be issued which comply with Article ~~22(4)~~ 52(4) of the *UCITS Directive*.

Annex M**Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)**

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

- 5.4.9 R Undertakings whose registered office is in a third country which would have required authorisation in accordance with Article 5(4) 6(1) of the *UCITS Directive* or with regard to portfolio management under point 4 of section A of Annex 1 to *MiFID* if it had its registered office or, only in the case of an *investment firm*, its head office within the *EEA*, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this rule ~~provide~~ provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.
[Article 23(6) *TD*]

Annex N

Amendments to the Perimeter Guidance manual (PERG)

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

13.1 Introduction

...

MiFID scope

...

In addition to investment firms, MiFID is also relevant to credit institutions providing investment services or performing investment activities (see Q5) and ~~UCITS management companies~~ to UCITS management companies to which ~~article 5(4)~~ article 6.4 of the UCITS Directive applies (in other words, UCITS investment firms).

...

13.2 General

...

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

If you are the ~~management company~~ management company of a *UCITS scheme* with a permission to manage investments including MiFID financial instruments pursuant to ~~article 5.3~~ article 6.3 of the UCITS Directive, certain MiFID provisions apply to you when you provide investment services to third parties (see ~~article 5.4~~ article 6.4 UCITS Directive). These include initial capital endowment, organisational and conduct of business requirements. You are a *UCITS investment firm* for the purposes of the ~~FSA Handbook~~ FSA Handbook. ~~Article 5.4~~ Article 6.4 of the UCITS Directive is reflected in paragraph (3) of the *Handbook* definition of “MiFID investment firm”.

...

13.5 Exemptions from MiFID

...

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

...

In the case of *UCITS management companies*, some MiFID provisions will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to ~~units~~ units to third parties, by virtue of article ~~5(4)~~ 6(4) of the *UCITS Directive* (see Q6).

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